

BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:

COMMONWEALTH EDISON COMPANY

Application of Commonwealth

Edison Company for a

certificate of public
convenience and necessity

pursuant to Section 8-406 of
the Illinois Public Utilities

Act to construct, operate, and

maintain a new 138,000 volt

electric transmission line in

Kane and McHenry Counties in

Illinois.

Chicago, Illinois

January 30, 2008

Met, pursuant to notice, at 9:30 a.m.

BEFORE :

Mr. Glennon P. Dolan, Administrative Law Judge

APPEARANCES :

MR. ARSHIA JAVAHERIAN and MR. MATTHEW L. HARVEY

160 North LaSalle Street

Suite C-800

Chicago, Illinois 60601

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for ICC staff;
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MR. CHRISTOPHER ZIBART and MS. KATHERINE LICUP

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1 APPEARANCES: (CONT.)

2 MR. RICHARD BERNET
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6 for Exelon Business Services Company;

7 MR. JOSEPH D. MURPHY
8 306 West Church Street
9 Champaign, Illinois 61820
10 for Village of Huntley;

11 MR. WILLIAM M. SHAY
12 456 Boulton Street
13 Suite 203
14 Peoria, Illinois 61602
15 for the Kreutzer Road parties;

16 MR. STEPHEN MOORE
17 200 West Superior Street
18 Suite 400
19 Chicago, Illinois 60610
20 for Howard E. Reid;

21 MR. MITCHELL BRYAN
22 20 North LaSalle
23 Chicago, Illinois 60602
24 for Intervenor Indymac FSB;

25 MR. SCOTT LASCARI
26 191 North Wacker Drive
27 Suite 3700
28 Chicago, Illinois 60606
29 for Neumann Homes, Inc.;

30 MR. ERIC ROBERTSON
31 P.O. Box 735
32 1939 Delmar Avenue
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34 for Village of Gilberts.

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1	<u>E X H I B I T S</u>		
2	<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
3	Huntley Cross No. 6		335
4	Huntley Nos. 2.0, 2.1,		
5	2.2, 4.0		338
6	5.2, 5.3		339
7	2		343
8	5.0,		388
9	5.1, 5.2		388
10	7, 8, 9		424
11	12	529	
12	13		543
13	Reid No. 1.0		399
14	2.0		404
15	ComEd Nos. 1.01-1.05		402
16	KRP Nos. 1.0, 1.2, 1.3,		413
17	1.4-A, B, C, 2.0		413
18	Indymac 1.0		432/489
19	GILBERTS NO.1.0,2.0,2.1		492
20	& 2.2		492
21	ICC STAFF		
22	NO 3.0		545
	1.0 & 2.0		550

1 ADMINISTRATIVE LAW JUDGE DOLAN: By the
2 direction and authority of the Illinois Commerce
3 Commission, I call Docket No. 07-0310, Commonwealth
4 Edison Company, an application of Commonwealth Edison
5 Company for a certificate of public convenience and
6 necessity pursuant to Section 8, dash, 406 of the
7 Illinois Public Utilities Act to construct, operate,
8 and maintain a new 138,000 volt electric transmission
9 line in Kane and McHenry Counties in Illinois.

10 Will the parties please identify
11 themselves for the record.

12 MR. HARVEY: Appear for the staff of the
13 Illinois Commerce Commission, Arshia Javaherian and
14 Matthew L. Harvey, 160 North LaSalle Street, Suite
15 C-800, Chicago, Illinois 60601.

16 MR. ZIBART: For the petitioner, Commonwealth
17 Edison Company, Christopher Zibart and Katherine
18 Licup of Foley & Lardner, LLP, 321 North Clark
19 Street, Chicago.

20 MR. BERNET: For the petitioner, Richard
21 Bernet, Exelon Business Services Company, 10 South
22 Dearborn, Suite 4900, Chicago, Illinois 60603.

1 MR. MURPHY: On behalf of the Village of
2 Huntley, Joseph D. Murphy, 306 West Church Street,
3 Champaign, Illinois 61820.

4 MR. SHAY: Appearing for the Kreutzer Road
5 parties, William M. Shay, 456 Boulton Street, Suite
6 203, Peoria, Illinois 61602.

7 MR. MOORE: Appearing on behalf of Howard E.
8 Reid, Stephen Moore, the law firm of Rowland & Moore,
9 200 West Superior Street, Suite 400, Chicago,
10 Illinois 60610.

11 MR. BRYAN: On behalf of intervenor, Indymac
12 FSB, Mitchell Bryan, B-r-y-a-n, of Leventhal
13 Perlstein, LLC, 20 North LaSalle, Chicago,
14 Illinois 60602.

15 MR. LASCARI: On behalf of Neumann Homes, Inc.,
16 Scott Lascari, DrinkerBiddle, 191 North Wacker Drive,
17 Suite 3700, Chicago, Illinois 60606.

18 MR. ROBERTSON: On behalf of the Village of
19 Gilberts, Eric Robertson, Lueders, Robertson &
20 Konzen, P.O. Box 735, 1939 Delmar Avenue, Granite
21 City, Illinois 62040.

22 ADMINISTRATIVE LAW JUDGE DOLAN: All right.

1 Let the record reflect there are no other
2 appearances.

3 And are there any preliminary matters
4 before we proceed with the testimony?

5 MR. MURPHY: I don't believe there are.

6 ADMINISTRATIVE LAW JUDGE DOLAN: Did you want
7 to do those exhibits?

8 MR. MURPHY: Oh, I'm sorry. Well, yes, there
9 are. I have now provided to the administrative law
10 judge and distributed to the parties copies of
11 Huntley's Cross-Examination Exhibit 5, which consists
12 of three pages, 5.1, 5.2 and 5.3.

13 These were introduced during the
14 cross-examination of Ms. Murphy yesterday, and I'm
15 not sure whether I moved to admit them, but I would
16 move to admit them now. I would also advise the
17 parties that I'm obtaining copies of
18 cross-examination -- excuse me. Huntley
19 Cross-Examination Exhibit 6, which is that plat map
20 of Wing Pointe. And when that comes, I will
21 distribute it to the parties and move for its
22 admission as well.

1 ADMINISTRATIVE LAW JUDGE DOLAN: Okay. To be
2 honest with you, I can't remember if we -- I know we
3 marked these photos yesterday as exhibits, but I'm
4 not 100 percent sure if we did admit them into the
5 record. So if there is no objection, I'll just admit
6 these into the record. And then if we did
7 yesterday --

8 MR. ZIBART: Which ones?

9 ADMINISTRATIVE LAW JUDGE DOLAN: The photos.
10 We had black and whites yesterday.

11 MR. ZIBART: Right.

12 ADMINISTRATIVE LAW JUDGE DOLAN: Huntley's
13 Cross Exhibits 5.1, 5.2 and 5.3.

14 MR. ZIBART: Yeah. My recollection is that we
15 did not admit them yesterday, and I actual have an
16 objection as to two of the three photographs.

17 ADMINISTRATIVE LAW JUDGE DOLAN: Okay. And
18 what's the basis?

19 MR. ZIBART: The basis is that Mr. Murphy used
20 them with Ms. Murphy, and he asked her whether they
21 fairly and accurately represented the view of homes
22 from Kreutzer Road. And my recollection of her

1 testimony was that only one of the three did, and it
2 was the third one.

3 But 5.1 and 5.2, there was no
4 testimony to that effect. We don't have daily
5 copies, so I guess we can't check the transcript.
6 That's my recollection.

7 MR. MURPHY: And I'm being reminded by
8 Mr. Shay. I don't have a personal recollection. I
9 have to check the transcript, but Mr. Shay recalls
10 her testimony was that only the third picture showed
11 the relationship of the lines to the homes; and I'm
12 purely guessing that that's because it shows the
13 south side of the road.

14 But I suppose the other -- my other
15 suggestion is, if there's a concern about whether
16 these truly are Kreutzer Road and Wing Pointe, if I
17 could just ask Mr. Tomaso after I introduce his
18 testimony just to lay that foundation.

19 ADMINISTRATIVE LAW JUDGE DOLAN: Then I guess
20 I'll -- why don't we reserve a ruling on that, and
21 we'll go ahead with Mr. Tomaso and he can lay a
22 foundation and we can deal with it then.

1 MR. MURPHY: Thank you.

2 ADMINISTRATIVE LAW JUDGE DOLAN: And then what
3 about Huntley's Cross Exhibit 2? Are you going to
4 admit that?

5 MR. MURPHY: Well, I also thought that
6 Mr. Tomaso could basically give you the same
7 explanation that I gave you yesterday and that would
8 answer the concern that you did not have a witness
9 testimony to those elements.

10 ADMINISTRATIVE LAW JUDGE DOLAN: Okay. All
11 right. That's fine. Do you want to go ahead and
12 proceed with Mr. Tomaso then?

13 MR. MURPHY: Well, I have actually one other
14 question. We now have, I believe, copies of the
15 Cross-Examination Exhibit 6. So we can go ahead and
16 move that.

17 And just for the record, I have now
18 distributed to the parties and provided to the ALJ
19 copies of Huntley's Cross-Examination Exhibit 6,
20 which is a plat map of Wing Pointe.

21 ADMINISTRATIVE LAW JUDGE DOLAN: Okay. Is
22 there any objections?

1 MR. ZIBART: No, your Honor.

2 MR. HARVEY: None from staff.

3 MR. BRYAN: No, your Honor.

4 ADMINISTRATIVE LAW JUDGE DOLAN: Okay. Then

5 Huntley Cross Exhibit No. 6 will be admitted into the

6 record.

7 (Whereupon, Huntley Cross

8 Exhibit No. 6 was admitted into

9 evidence.)

10 MR. MURPHY: And now Huntley will like to call

11 its first -- or call Carl Tomaso, the village

12 manager, as a witness in this case.

13 ADMINISTRATIVE LAW JUDGE DOLAN: All right.

14 Mr. Tomaso, will you please raise your right hand.

15 (Witness sworn.)

16 CARL J. TOMASO,

17 called as a witness herein, having been first duly

18 sworn, was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY

21 MR. MURPHY:

22 Q Mr. Tomaso, will you please restate your

1 name, spell it for the record?

2 A My name is Carl J. Thomas. It's spelled
3 T-o-m-a-s-o.

4 Q And by whom are you employed?

5 A I'm employed by the Village of Huntley.

6 Q And are you here on behalf of the Village
7 of Huntley?

8 A Yes.

9 Q What is your employment there?

10 A I'm the village manager for the Village of
11 Huntley.

12 Q Okay. I see you have in front of you
13 what's been marked as Huntley Exhibit 2.0 and is
14 captioned, The Prepared Direct Testimony of Carl
15 Thomas, Village Manager.

16 Does that document consist of three
17 pages of questions and answers ending on Line 52?

18 A Yes.

19 Q And are there two exhibits attached to
20 that?

21 A Yes.

22 Q And was this prepared by you or under your

1 direction?

2 A Yes.

3 Q And if I were you to ask you these

4 questions here today, would these be your answers?

5 A Yes.

6 Q Would you please put in front of you what's

7 been marked Huntley Exhibit 4.0. Do you have that

8 there?

9 A Yes.

10 Q And that's captioned, The Prepared Rebuttal

11 Testimony of Carl Tomaso, Village Manager; is it not?

12 A Yes.

13 Q And does it consist of 16 pages of

14 questions and answers ending on Line 300?

15 A Yes.

16 Q And there are no exhibits to the rebuttal

17 testimony?

18 A Yes.

19 Q And if I were to ask you the questions here

20 in Exhibit 4.0, would these be your answers?

21 A Yes.

22 MR. MURPHY: With that, I would move for the

1 admission of Huntley Exhibits 2.0 along with
2 Exhibit 2.1 and 2.2 and Huntley Exhibit 4.0.

3 ADMINISTRATIVE LAW JUDGE DOLAN: Any --

4 MR. HARVEY: No objection.

5 MR. ZIBART: No objection.

6 MR. BRYAN: No objection.

7 MR. LASCARI: No objection.

8 ADMINISTRATIVE LAW JUDGE DOLAN: Okay. Then
9 Huntley Exhibit 2.0 along with attachments 2.1 and
10 2.2 and Huntley Exhibit 4.0 will be admitted into the
11 record.

12 (Whereupon, Huntley Exhibit
13 Nos. 2.0, 2.1, 2.2, 4.0 were
14 admitted into evidence.)

15 MR. MURPHY: The witness is available for
16 cross-examination.

17 MR. HARVEY: Perhaps if I could interject at
18 this point. If Mr. Tomaso was going to authenticate
19 the photographs.

20 MR. MURPHY: You reminded me and I appreciate
21 that.

22

1 BY MR. MURPHY:

2 Q Mr. Tomaso, yesterday, ComEd witness Donell
3 Murphy was shown what has now been marked as Huntley
4 Exhibit 5.1, 5.2 and 5.3. I put those in front of
5 you. Are those -- what are those?

6 A Those are photos along Kreutzer Road
7 pointing to the north and the west identifying the
8 homes in the Kreutzer Road subdivision that abuts
9 Kreutzer Road. And Wing Pointe subdivision that abut
10 Kreutzer Road.

11 MR. MURPHY: With that, I would move for the
12 admission of Cross Exhibit 5.1, 5.2 and 5.3.

13 MR. ZIBART: No objection.

14 ADMINISTRATIVE LAW JUDGE DOLAN: All right.
15 Then with that, we'll have Huntley Cross Exhibit 5.1,
16 5.2 and 5.3, it will be admitted into the record.

17 (Whereupon, Huntley Cross
18 Exhibit Nos. 5.1, 5.2, 5.3 were
19 admitted into evidence.)

20 MR. MURPHY: Also, if I may, your Honor.

21 BY MR. MURPHY:

22 Q Mr. Tomaso, yesterday, we were discussing

1 Huntley Cross Exhibit 2 and some questions came up
2 about what all these lines represent. Can you tell
3 me what the black lines on Huntley Cross Exhibit 2
4 are intended to represent?

5 A They represent the corporate limits of the
6 Village of Huntley and the Village of Gilberts.

7 Q And the white lines, what do those intend
8 to represent?

9 A Those lines represent the planning
10 jurisdictions of Village of Huntley and the Village
11 of Gilberts.

12 Q And are those planning jurisdictions, are
13 there agreements that underlie those?

14 A Yes.

15 Q And are those agreements something that
16 both the Village of Gilberts and the Village of
17 Huntley have signed on to?

18 A Yes.

19 Q Is it your expectation that at some point
20 in the future the two villages will share a common
21 boundary that's currently represented by the planning
22 jurisdiction between them?

1 A Yes.

2 Q And the blue lines -- I'm sorry, the
3 yellow, pink, and blue lines, we were -- we learned
4 yesterday that these roughly correspond to ComEd's
5 proposals -- I'm sorry, Phase 1 is an existing line
6 that was part of this project. Phase 2 is an
7 existing line that was part of this project. The
8 solid blue line represents ComEd's proposal. Is that
9 your understanding?

10 A Yes.

11 Q And you see here as we follow the lines
12 from the interstate north that it's drawn side by
13 side with the village boundary. Do you see that?

14 A I do.

15 Q Do you understand -- is it your intention
16 to show that the line is absolutely inside the
17 village's municipal boundary?

18 A No. It doesn't matter if the line is
19 inside or outside of our planning jurisdiction or
20 boundary. It's still an impact to the Village of
21 Huntley.

22 Q But -- so you're not -- it is not your

1 testimony that this is necessarily inside?

2 A Yes.

3 Q It might be on the line. It might be just
4 outside the line?

5 A Yes.

6 Q And do you believe the more important issue
7 is that the village -- the current village boundary
8 or the planning jurisdiction?

9 A The current planning jurisdictional line.

10 MR. MURPHY: And without further foundation,
11 your Honor, I would move to admit into evidence
12 Huntley Cross Exhibit 2.

13 ADMINISTRATIVE LAW JUDGE DOLAN: Any
14 objections?

15 MR. HARVEY: None from staff.

16 MR. BRYAN: No, your Honor.

17 MR. MOORE: No, your Honor.

18 MR. LASCARI: No, your Honor.

19 ADMINISTRATIVE LAW JUDGE DOLAN: All right.
20 Then Huntley Cross Exhibit No. 2 will be admitted
21 into the record.
22

1 (Whereupon, Huntley Cross
2 Exhibit No. 2 was admitted into
3 evidence.)
4 ADMINISTRATIVE LAW JUDGE DOLAN: And it looks
5 like, Mr. Zibart, you want to go ahead and proceed?
6 MR. ZIBART: Sure.
7 CROSS-EXAMINATION
8 BY
9 MR. ZIBART:
10 Q Good morning, Mr. Tomaso.
11 A Good morning.
12 Q I guess I'm going to have to ask you -- I'm
13 going to ask you a question I don't know the answer
14 to, so I'm going to have you step up to this Huntley
15 Cross Exhibit 2 for a second, please.
16 A Yes.
17 Q Can you point out on that map where the Par
18 Development on the former Sinclair property is
19 located? You mentioned that in your direct
20 testimony.
21 A Yes. For the court reporter reference
22 purposes, I'm pointing to the Union Pacific Railroad

1 right of way. I'm also pointing to the Kreutzer
2 Road, the Kreutzer Road alignment, and the Union
3 Pacific Railroad right of way as the general area.
4 It's located immediately to the west of that
5 intersection on the south side of current Kreutzer
6 Road alignment.

7 Q And has that been annexed into Huntley?

8 A Yes.

9 Q And when was that? When was that
10 annexation approved?

11 A In March of '07. March, April of '07.

12 Q And pointing to this area south of Kreutzer
13 Road, south of the Burnett Industrial subdivision,
14 this area here, was that area recently annexed to the
15 Village of Huntley?

16 A It's the same parcel. It's the Par
17 Development parcel. Yes.

18 Q Okay. And what is planned to go on
19 those -- on that parcel?

20 A These a combination of several different
21 land uses. There's a commercial development along
22 Kreutzer Road, a multiple family development, a

1 component open space and the option of a potential
2 train station in that location of Kreutzer Road and
3 Union Pacific Railroad right of way.

4 Q Are you familiar with the location of the
5 Gordon-Stody property?

6 A I am.

7 Q And can you point that out on this map.

8 A I'm pointing to as along Freeman Road,
9 immediately across from the outlet mall and behind
10 the Horizon Group property, immediately adjacent to
11 the property to the east.

12 Q So that's east of the current village
13 boundaries?

14 A It's currently east of the current village
15 boundaries, yes.

16 Q And so just to clarify, what I think you
17 and Mr. Murphy were talking about, if the -- you
18 understand that ComEd proposes to put its line on the
19 Gordon-Stody property, right on the -- west 50 feet?

20 A Yes.

21 Q And so that would place the line just
22 outside the current village boundary; is that right?

1 A It would place it adjacent to the current
2 village boundary.

3 Q Right.

4 Okay. You can step away from that.
5 Thank you very much.

6 A Thank you.

7 Q Mr. Tomaso, you still have your direct
8 testimony in front of you?

9 A I do. Yes.

10 Q On Page 2 of that, Lines 24 through 27, you
11 talk about Huntley investing substantial capital
12 development funds. Do you remember that, and do you
13 see that there?

14 A Could you allow me to read it a second,
15 please.

16 Q Sure.

17 A Yes. Go ahead.

18 Q What do you mean by "capital development
19 funds"?

20 A As part of the development annexation
21 process in the village, the village collects capital
22 development funds from developers and utilizes them

1 for infrastructure improvements.

2 Q And so I guess -- is that -- do you
3 consider that -- is that Huntley's money or is that
4 money that a developer was forced to pay?

5 A It's negotiated as part of an annexation
6 agreement.

7 Q And so was it -- is it Huntley's money or
8 is it the developer's money?

9 A Pursuant to the terms of annexation
10 agreement, it becomes the funds of the Village of
11 Huntley upon annexation.

12 Q And then Huntley decides to spend it on the
13 improvements that you listed here?

14 A Or it's negotiated as part of public
15 improvements to support the development.

16 Q Okay. You are familiar with the
17 intergovernmental agreement among Huntley and other
18 jurisdictions regarding eventual widening of Kreutzer
19 Road?

20 A Yes.

21 Q And the idea of that agreement is that
22 whoever develops the lands south Kreutzer Road will

1 contribute the necessary land to widen Kreutzer Road;
2 is that right?

3 A The purpose of the intergovernmental
4 agreement is to establish a corridor with a profile
5 to accommodate all of the parties that are a part of
6 the agreement.

7 Q Okay. And as part of that agreement --
8 part of that agreement includes a requirement that
9 whoever develops the land south of Kreutzer Road will
10 provide the land for the widening?

11 A It's a requirement whoever develops along
12 the entire corridor will develop -- would be
13 responsible, potentially, for the construction and
14 dedication of the road right of way.

15 Q Okay. Would you agree that until the
16 Kreutzer and Caranci families agree to sell their
17 land to a developer, that agreement doesn't become
18 active for their parcels; is that right?

19 A I wouldn't agree with that.

20 Q If the land south of Kreutzer road is not
21 developed, then the road will not be widened in the
22 area that's not developed; isn't this true?

1 A No, it's not true.

2 Q Does Huntley have the power to condemn
3 private property for building roads?

4 A Within its authority of eminent domain,
5 yes.

6 Q And so if the widening of Kreutzer Road
7 were a high enough priority, the Village could
8 condemn the land and build the road south; could it
9 not?

10 A It's not within the current policy of the
11 village, but the village could.

12 Q Now, you understand that ComEd has proposed
13 to build the proposed transmission line on the south
14 side of Kreutzer Road in part?

15 A In part, yes.

16 Q If Huntley has the power to acquire the
17 necessary land to widen the road, couldn't the
18 village acquire the land now so that ComEd could
19 locate it's line south of the widened right of way?

20 A It's not been -- that is not the policy of
21 the Village of Huntley.

22 Q The village could do that?

1 A It's not the current policy of the Village
2 of Huntley.

3 Q I understand it's not the current policy.
4 I'm talking about what the village could do.

5 A The village could potentially negotiate.

6 Q And the village could use eminent domain to
7 acquire that?

8 A It's outside of our village planning. It's
9 outside of our current corporate limits. I don't
10 know the answer to that question.

11 Q I show you a document that I guess this
12 comes out of Appendix A of ComEd Exhibit 4.1. It
13 appears to be a conceptual route map.

14 Have you seen that document before?

15 A Could you give me a few seconds to look at
16 it, please.

17 Q Absolutely.

18 A Yes, I've seen it as part of the study.

19 Q Okay. Did you see it before that?

20 A No.

21 Q Okay. So I think you said you've been the
22 village manager of Huntley for over ten years; is

1 that right?

2 A Yes, sir.

3 Q But you have not seen that document until

4 recently?

5 A I've seen it as part of the study when the

6 study was presented to the village. So I've

7 identified it as part of the study.

8 Q And by "the study," are we talking about

9 the study that Ms. Murphy worked on over the last

10 couple years or are you talking about the studies

11 that were done previously?

12 A The studies that were done previously.

13 Q Okay. So you saw that document several

14 years ago?

15 A Yes.

16 Q Okay. And would you agree that the Village

17 of Huntley attempted to take that document into

18 account when it was creating its plans for the

19 development to the area?

20 A As part of it's due diligence process in

21 laying out the development of the village, it was

22 taken into consideration.

1 Q I'm sorry, I'm not sure I've asked you this
2 question: You said you had seen it before, but for
3 the benefit of those who weren't looking on with you,
4 what is that document.

5 A The document is identified as
6 Alternative F. It's a route legend, which shows a
7 signal circuit, 138 kV route segment; a double
8 circuit, 138 kV route segment; and a triple circuit,
9 138 kV route segment citing corridor.

10 Q And is it your understanding that that was
11 the final route chosen in the previous study?

12 A Segments of it, yes.

13 Q And that map of Route F has -- it shows --
14 well, it shows some lines that are, I take it, to be
15 transmission line routes; is that right?

16 A Transmission corridors, yes.

17 Q Okay. And it also has some sort of shaded
18 areas that are wider than what a transmission
19 corridor would be; is that right?

20 A I don't know that.

21 Q Okay. What do you interpret those shaded
22 areas to mean?

1 A I don't know.

2 Q Well, a transmission line right of way is
3 only about 50 feet wide; right?

4 A Yes.

5 Q So would you interpret the shaded areas to
6 mean that these some decision making to be made in
7 that area as to the route?

8 A I don't know.

9 Q Okay. Would you agree that the Kreutzer
10 Road route is contemplated by that map?

11 A Segments of it, yes.

12 Q The segments of it including the Burnett
13 subdivision and all along Kreutzer Road?

14 A Yes.

15 Q And does it also show Route 47 as the route
16 for some of the north/south portion of the line?

17 A Yes.

18 Q Now, as the village manager of Huntley for
19 over ten years, you were at the village when Phases 1
20 and 2 of the Northwest Reliability Project were
21 constructed; is that right?

22 A Yes.

1 Q And so you've been aware for several years
2 that ComEd would at some point need to complete
3 Phase 3 of the project?

4 A Yes.

5 Q And you've had discussions over the years
6 with ComEd about that -- about Phase 3; haven't you?

7 A Yes.

8 Q And you've also discussed the upcoming
9 project with landowners that you thought might be
10 effected by it; is that right?

11 A Yes.

12 Q One of the potential routes that was
13 discussed in ComEd's direct testimony but was not
14 addressed by you in your testimony is the so-called
15 Main and Hallagus route. Are you familiar with that
16 route?

17 A I am, yes.

18 Q That shared several segments in common with
19 the Kreutzer Road route; is that right?

20 Well, I guess up to about where it
21 crosses the Union Pacific tracks.

22 A Do you have something? It's very difficult

1 to tell here. I'm sorry.

2 Q Right. Yeah.

3 It's best to switch exhibits. I'm
4 putting up here ComEd Exhibit 12.0. This -- the
5 ComEd proposed route here, that Kreutzer Road route,
6 is shown on blue on this?

7 A Uh-huh.

8 Q And the Main and Hallagus route would share
9 all the segments up to the point where it crosses the
10 railroad tracks here; is that your understanding?

11 A Can I go up and look at the map?

12 Q Absolutely.

13 This is just a reference. There's
14 Main Street coming across on that one line, and this
15 is Hallagus.

16 A Could you please tell me what you mean by
17 shared.

18 Q Okay. Well, I'm talking -- I'm trying to
19 get your understanding of what the Main and Hallagus
20 route is. And my understanding, and let's see if
21 it's yours, that it would be the same as the Kreutzer
22 Road route here and then they would deviate.

1 A What I understand is that the Main/Hallagus
2 route going this way was the route and that the
3 rest -- that you pointed to on the exhibit was still
4 very much in question.

5 Q Okay.

6 A Was not part of it. So the answer is, no,
7 it's not.

8 Q Okay. You are aware that ComEd owns the
9 right of way from approximately where Kreutzer Road
10 hits the railroad tracks up to the corner of the
11 Kudulac parcel running along the west side of the
12 Wing Pointe subdivision?

13 A Yes.

14 Q And so for ComEd to link up the rest of its
15 Kreutzer Road route to the corner of Main and
16 Hallagus, it could use its existing ComEd right of
17 way and it would only need to deal with one
18 landowner, Mr. Kudulac to get there; is that right?

19 A Actually, ComEd owns more than just the
20 Wing Pointe. There are some right of ways also
21 acquired over here too.

22 Q Okay. But you'd agree that if they use

1 their existing right of way along the west side of
2 Wing Pointe and then continuing north along some of
3 the Kudulac parcel, ComEd would be able to reach its
4 existing transmission line by dealing with just one
5 parcel owner, Mr. Kudulac?

6 A Potentially, yes.

7 Q And is it your understanding that that was
8 a route that ComEd was pursuing at one time?

9 A I understand it was a route that they
10 contemplated at one time, yes.

11 Q And you have met Mr. Kudulac; have you not?

12 A Yes.

13 Q And did you know that ComEd was attempting
14 to negotiate an easement with Mr. Kudulac?

15 A Yes.

16 Q And you at one time encouraged Mr. Kudulac
17 to find an acceptable right of way for ComEd to cross
18 his property; did you not?

19 A No.

20 Q And what's the status of the Kudulac parcel
21 today? What's the plan for that?

22 A It's currently in the corporate limits of

1 the Village of Huntley, and it's a combination of
2 business and residential use as the future land use
3 is only designation for the property in question.

4 Q Is it fair to say that you agree with
5 ComEd's decision to take the Main and Hallagus route
6 out of consideration?

7 A Yes.

8 Q And you also agree with ComEd's decision
9 not to use Route 47 as the route for the transmission
10 line?

11 A Yes.

12 Q Are there any routes for Phase 3 of the
13 Northwest Reliability Project which are acceptable to
14 the Village of Huntley that would go inside the
15 village boundaries of the Village of Huntley?

16 A No.

17 MR. ZIBART: I have no further questions on
18 cross-examination.

19 ADMINISTRATIVE LAW JUDGE DOLAN: Okay.

20 Mr. Robertson, do you want to go ahead?

21

22

1 CROSS-EXAMINATION

2 BY

3 MR. ROBERTSON:

4 Q Mr. Tomaso, good morning.

5 A Good morning, sir.

6 Q My name is Eric Robertson. I represent the
7 Village of Gilberts.

8 With regard to Huntley Exhibit 2, what
9 are the most recent changes in the Cross Exhibit 2?

10 What are the most recent changes in
11 the boundaries of the Village of Huntley shown on
12 this exhibit?

13 A The most recent changes of additional land
14 that's been -- I assume you mean annexed to the
15 village?

16 Q Yes.

17 A The three most annexations that are -- that
18 have occurred are a 60-acre parcel. It's located on
19 the southeast quadrant of the Route 47 I-90
20 interchange. The inclusion of the Par, slash, Tucker
21 Development located, as I previously described, at
22 the southwest corner of the Union Pacific Railroad

1 right of way and Kreutzer Road. And the other one
2 would be at the -- located immediately adjacent to
3 the Kreutzer Road/Route 47 intersection with Powers
4 Road being the -- one of the boundaries located along
5 the Route 47 frontage.

6 Q And by "recent," can you give me a date or
7 a month or year for those annexations?

8 A The Par developments occurred in the spring
9 of '07, and the annexation of the 60-acre south of
10 the village occurred in late '06.

11 Q And how about the boundary lines for the
12 planning area, when were those put in place?

13 A Approximately 1995.

14 Q Now, how does that planning agreement work?
15 What are the parties obligated to do under it?

16 A The jurisdictional boundary agreement
17 requires the village to plan accordingly for the
18 establishments of the lines. It allows for
19 provisions to support the expansion of its utilities
20 into the facility planning areas, are the two primary
21 functions.

22 Q And would the -- and just so I understand

1 how it works, on either side of that planning area
2 line, on your side of the planning area line, you are
3 exclusively responsible for planning within that
4 area?

5 A Yes.

6 Q And on the other side of the line, the
7 village of Gilberts would be exclusively responsible
8 for planning in that area; is that correct?

9 A Yes.

10 MR. ROBERTSON: No further questions.

11 ADMINISTRATIVE LAW JUDGE DOLAN: Thank you.
12 Mr. Lascari.

13 MR. LASCARI: I have no question for this
14 witness, your Honor.

15 ADMINISTRATIVE LAW JUDGE DOLAN: Mr. Bryan.

16 MR. BRYAN: I have a couple of questions.
17 Thank you, your Honor.

18 CROSS-EXAMINATION

19 BY

20 MR. BRYAN:

21 Q Mr. Tomaso, good morning. My name is Mitch
22 Bryan. I represent Indymac FSB.

1 Mr. Tomaso, what does the extent of
2 your familiarity with the development under
3 construction known as the Conservancy?

4 A I'm very familiar with it.

5 Q What opportunities have you had personally
6 to inspect the property, and when was the most recent
7 time to do that?

8 A I've been out to the property in question
9 numerous times. Most recently, mid December of '07.

10 Q And what's the extent of your familiarity
11 with the on-site infrastructure that's already been
12 installed and constructed?

13 A My familiarity is that, based on my
14 analysis, is that the components of the
15 infrastructure on site have been constructed and that
16 the utilities have been extend to the water main to
17 service -- to the water tower to the service the
18 development.

19 Q So by personal inspection, you've
20 physically observed landscaping that's been
21 installed?

22 A Yes.

1 Q Okay. And sidewalks?

2 A Yes.

3 Q And also curbs and gutters?

4 A Segments, yes.

5 Q And also drain tile, erosion control and

6 mass earthwork?

7 A Yes.

8 Q And some paving, including lime

9 stabilization?

10 A Some paving, yes.

11 Q And sanitary systems have been installed

12 too as well?

13 A Segments, yes.

14 Q And that includes dewatering systems?

15 A I don't know that.

16 Q What about sewers?

17 A Yes.

18 Q And you've also seen some supply of soil,

19 concrete, and asphalt?

20 A I'm not familiar with that.

21 Q All right. You're familiar with some storm

22 dewatering systems?

1 A I can't say that I am. No, I'm not.

2 Q And have you observed installation of

3 utility sleeves?

4 A I have not.

5 Q Okay. You mentioned something about water

6 supply. What do you know about that?

7 A I know that they the Village of Huntley was

8 put on notice when the property was annexed into the

9 Village of Gilberts about expanding the utilities

10 into that particular area for their hearings that

11 were before the IAPA. We were made aware of that,

12 you know, along with their sanitary sewer extensions.

13 Q You're familiar with a relatively new and

14 sophisticated water treatment center that was built

15 in Gilberts?

16 A Generally, yes.

17 Q Okay. What's your knowledge of it?

18 A Just general knowledge. It was being

19 installed by the developer, I believe, for the

20 Village of Gilberts.

21 Q And are you aware that off site of the

22 Conservancy but for purposes of serving the

1 Conservancy and the Conservancy only that a tap-in
2 system to that new water treatment center has been
3 installed?

4 A I'm not. No.

5 Q Okay. Are you aware of any off site
6 improvements that have been supplied by or for the
7 Village of Gilberts to serve the Conservancy and only
8 Conservancy?

9 A I am not.

10 Q Are you not familiar with an above-ground
11 water tank in the northern edge of the Conservancy on
12 Galligan Road?

13 A I'm familiar with it, yes.

14 Q Are you -- you're familiar with the new
15 school building that's been built in the southwest
16 corner of Galligan and Freeman?

17 A Southeast, yes.

18 Q Southeast. Pardon me. Thanks.

19 And you're also aware of permanent
20 widening of Galligan Road south of Freeman partly
21 adjacent to a new school building?

22 A Yes.

1 Q And do you know what the costs or
2 approximate costs of those off-site improvements are?

3 A I don't know the exact costs, no.

4 Q Based on your experience as village
5 manager, can you offer a range that you would expect
6 that to be?

7 A I wouldn't want to speculate on that. No.

8 Q Would it be speculation to suggest that it
9 was well into seven figures, if not, eight figures?

10 A That range sounds probable. Yes.

11 Q And are you familiar or do you have any
12 personal knowledge about the manner in which the
13 on-site improvements that I described to you earlier
14 were financed or who paid for them?

15 A I'm familiar with the financing technique
16 that was used, yes.

17 Q How is it that you're familiar with that,
18 sir?

19 A An examination of their annexation
20 agreement and attending approximately three to four
21 meetings in the Village of Gilberts when this
22 specific item was discussed.

1 Q Would you consider yourself knowledgeable
2 enough to be conversant on any of the details of that
3 financing?

4 A Other than what's described in the
5 annexation agreement, no.

6 Q Okay. Could you tell us what your
7 understanding is of what's described in the
8 annexation agreement?

9 A I'm aware of the terms and the provisions
10 relating to special service areas and how special
11 service areas were supported between the developer
12 and the Village of Gilberts and used to finance
13 significant components of the developer.

14 Q And how were they financed?

15 A Through special services area bonds.

16 Q Do you know the gross amount of bonds
17 already issued and sold?

18 A I don't recall the exact number offhand,
19 no.

20 Q Okay. Do you recall that it's a number in
21 excess of ten million?

22 A I do, yes.

1 Q All right. Do you know whether the
2 proceeds of that bond issue were for the purpose of
3 financing the on-site infrastructure that I described
4 only or both on site and off site?

5 A I don't know exactly what they were used
6 for, either on site or off site. No, I don't.

7 Q So am I correct that you have no other
8 information than what you've told me about how the
9 off site improvements that -- and infrastructure that
10 I just discussed with you were financed?

11 A I don't.

12 MR. BRYAN: Subject to recross, that's all I
13 have.

14 ADMINISTRATIVE LAW JUDGE DOLAN: All right.
15 Thank you.

16 Any redirect?

17 MR. MURPHY: Yes.

18 REDIRECT EXAMINATION

19 BY

20 MR. MURPHY:

21 Q Mr. Zibart asked you some questions about
22 money that came into the village through annexation

1 agreements. Do you recall that discussion?

2 A Yes.

3 Q When the village collects that money

4 through the annexation agreement, does the village

5 have obligations about how it's spent?

6 A Limitations, yes.

7 Q And are those described in the annexation

8 agreement?

9 A They could be on a case-by-case basis.

10 Q And Mr. Zibart also asked you some

11 questions regarding the placement of the line on the

12 south side of Kreutzer Road, and I believe his

13 question was to the extent of wouldn't moving the

14 line be the obligation of the developer who developed

15 that parcel. Do you recall that discussion?

16 A I do, yes.

17 Q Do you understand there to be a cost

18 involved in moving that line?

19 A Yes.

20 Q And who do you believe would incur that

21 cost?

22 A It would be either the village or the

1 developer, depending on the case and situation.

2 Q And from your point of view, is that
3 incumbent on the land different if it's the village
4 or if it's the developer?

5 A No.

6 Q In either case, it's a cost that someone
7 will have to incur to develop that land; isn't it?

8 A Yes.

9 Q You also were asked whether the village
10 could -- whether the village could take by eminent
11 domain authority the land along the south side of
12 Kreutzer Road and build the road now. Do you recall
13 that discussion?

14 A Yes.

15 Q If the village were to do that, first of
16 all, who would carry the cost to build that road?

17 A The Village of Huntley.

18 Q And if you did that, could the road be
19 constructed to take into consideration any kind of
20 development or would it -- would the building of the
21 road then impact what kind of development would be on
22 its south side?

1 A The construction road would impact the
2 development that would be on the south side of the
3 road.

4 Q So if the developer came along who had an
5 inconsistent view of the property, changing that
6 would be a cost to the developer?

7 A Yes.

8 Q Mr. Zibart also asked you whether it was --
9 whether there was any route that the village would
10 support that was inside the village. Do you recall
11 that?

12 A I do.

13 Q And when you and I were discussing Huntley
14 Cross Exhibit 2 earlier, I believe you told me that
15 you were focused more on the planning jurisdiction
16 than the village boundaries. Was that your
17 testimony?

18 A That was my testimony.

19 Q And why is that?

20 A Because, ultimately, the planning
21 jurisdiction area will be, by agreement, in the
22 Village of Huntley some day.

1 Q And does the Village of Huntley support a
2 route that includes area within the city limits or
3 within the planning area?

4 Doesn't the modified Galligan/Freeman
5 route come into the Village of Huntley's planning
6 area?

7 A It comes into the Village of Huntley's
8 planning area west of Powers Road, potentially, yes.

9 Q And, in fact, the route all the way -- when
10 it comes and joins ComEd's route to go down to the
11 interstate, isn't that in, on or at the current city
12 municipal boundaries?

13 A Yes.

14 Q Mr. Bryan asked you some questions about
15 the Conservancy and things that had been constructed
16 there.

17 We're jumping ahead a little. For the
18 record, Mr. Zibart has given me access to a copy of
19 Gilberts Exhibit 2.2, which has not yet been
20 admitted, though, I expect it will be today.

21 Mr. Tomaso, are you familiar with this
22 exhibit? Do you know what it depicts?

1 A Yes.

2 Q What does it depict?

3 A It depicts most of the Conservancy
4 development in the Village of Gilberts.

5 Q And you were asked by Mr. Bryan some
6 questions about infrastructure. Could you come over
7 here to the map, please.

8 There is a water tower on this. Could
9 you show me where the water tower is.

10 A Water tower is generally located, I do
11 believe, up in this location here. Pointing to
12 the -- off of Galligan Road and merely to the west of
13 Galligan Road.

14 Q And that's a sign that says elevated tank;
15 right?

16 A Yes.

17 Q Okay. And can you show me -- there was
18 some discussion of a school. Where is the school?

19 A The school site is located generally in
20 this area down here.

21 Q Okay. And so that's actually on the
22 southeast quadrant; correct?

1 A Yes.

2 Q So there's a big -- and I'm just trying to
3 do this for the record. There's a big blue space in
4 the southeast quadrant, and your understanding is
5 that the school is in the southeast corner of the
6 blue quadrant?

7 A Actually, it's located down in this area
8 here.

9 Q So this actually -- this has been
10 rearranged. Even though this shows houses, it's your
11 understanding that, in fact, the school is down
12 there?

13 A That is correct.

14 Q Okay. And do you see on the map the
15 Village of Gilberts has placed red lines where they
16 purport to have put water -- I'm sorry, sanitary
17 sewers?

18 A Yes.

19 Q And they have put blue lines where they
20 purport to have put water mains; correct?

21 A Yes.

22 Q And I notice there's a legend over here

1 which shows a teal slashing that says platted
2 subdivision with infrastructure.

3 When you were talking about the
4 construction that Mr. Bryan asked you about, can you
5 tell me and just point out and try to describe for
6 the record where you saw that. Where is it in this
7 subdivision?

8 A Based on the number of times that I've been
9 out there, I've driven in. The road is only
10 constructed to this point here off of the north of
11 Freeman Road. And I believe the two models are
12 located in this area here, and there's some
13 foundations that have been dug. But I generally
14 observe the public utilities, but I could see in the
15 grading that's been done in this area right here.

16 Q Well, exactly how far north have you seen
17 the utility work, to the best of your understanding?
18 I know this is not your map.

19 A The best of my understanding, I can use
20 this point of reference generally at the location of
21 the intersection of these two streets here.

22 Q Okay. And when -- any grading work? Where

1 have you seen grading work?

2 A I've seen grading work in the general area
3 right in here, around the model, to the north of the
4 model to generally up in this area here also.

5 Q And there was a discussion about sidewalks
6 and streets. Where are those?

7 A Limited streets and sidewalks are in this
8 area here. In fact, the street stops right about
9 here and stops as you come in the X point and there
10 are sidewalks only in front of the two models.

11 Q And is there any -- to the best of your
12 knowledge, is there any grading or access or street
13 work that follows what appears -- that's not a
14 street.

15 A No, sir.

16 Q Okay. But is there any grading work that
17 you've seen in this area here that's just south of
18 the Kishwaukee and just west of this road?

19 A No.

20 Q And you were also asked by Mr. Bryan how
21 familiar you were with the Conservancy. Have you
22 actually done anything to evaluate what the route

1 that Huntley advocates will do or could do to the
2 Conservancy?

3 A Yes.

4 Q What have you done?

5 A We hired the land planner --

6 Q Have a seat.

7 A Thank you.

8 Q Go ahead.

9 A The Village of Huntley hired the land
10 planner of Gary Weber and Associates to evaluate
11 concept option routes for the positioning of the
12 power lines through the Conservancy development.

13 The reason why we hired them was
14 because they assisted the Village of Huntley to our
15 endeavors as it relates to reorganizing and
16 realigning our subdivisions in the homes in the
17 Talimore subdivision and in the Covington Lake
18 subdivision. We hired them to do an analysis based
19 on the constraints that we had, based on the lines
20 going through the Village of Huntley.

21 MR. ROBERTSON: Your Honor, I'm going to object
22 to this line of questioning. He was asked about his

1 familiarity with the Conservancy development. He
2 wasn't asked what the analysis or they had done to
3 locate their line anywhere. And I don't think that
4 cross-examination opened the door to allow the
5 village to present an engineering study at this stage
6 of the case, which allegedly has something to do with
7 where the line could be relocated within the
8 development.

9 That's got nothing to do with his
10 actual knowledge of the development itself, and
11 they're trying to get this in the back door; and I
12 don't think it's fair at this point in the case, and
13 it's not consistent with the cross-examination that's
14 been conducted at this point.

15 MR. MURPHY: Your Honor, I do believe that
16 Mr. Bryan opened the door to this because I believe
17 the implication of his question was that the Village
18 of Huntley was not familiar and, you know, didn't
19 have any interest or care about what went on in the
20 Conservancy.

21 As far as the -- where it arrives in
22 the case, it just so happens that by the idiosyncrasy

1 of how we schedule cases here in the Commerce
2 Commission that the Village of Huntley was not made
3 aware of the Village of Gilberts objection and their
4 specific objections to our route until the same day
5 we filed our own rebuttal testimony.

6 So, you know, the Village of Huntley
7 has made a very serious effort to evaluate the actual
8 impact, because the test testimony here and the
9 testimony that we're being cross-examined on implied
10 that there are dire consequences; and I think the
11 Commission would be well served to be familiar with,
12 not necessarily the only way you could solve this,
13 but ways that are common ways that the Village of
14 Huntley has had to put in practice for Phase 1 and
15 Phase 2 repeatedly, that the Village of Gilberts
16 could deal with the same issues.

17 MR. ROBERTSON: That's an incorrect statement.
18 We objected to the Freeman/Galligan route in our
19 direct testimony. They were well aware of that.

20 They had the opportunity to put this
21 in their rebuttal. They had corrected their modified
22 route in their direct testimony. And in addition to

1 my objection that it's not proper cross-examination
2 at this time, it's also based on hearsay. None of
3 these people who did this study are here to testify
4 about it. All we have is this witness'
5 characterization.

6 And given the fact that this issue was
7 raised early on in our direct testimony about the
8 propriety of this route, modified or unmodified, they
9 had ample opportunity to do this. And to do this now
10 is extremely unfair. They don't have their witness
11 here. He hasn't been subject to cross-examination.
12 They haven't identified the presence of this study so
13 people could do discovery on it. And it's just not a
14 fair thing to do at this point, late stage of the
15 proceeding.

16 MR. BRYAN: Your Honor, if I may.
17 Mr. Robertson is right, I was going to sit still and
18 just listen, thinking that your Honor and Mr. Murphy
19 would afford me latitude in recross. However,
20 Mr. Robertson has convinced me -- he mentioned some
21 things I wasn't aware of.

22 MR. MURPHY: Go ahead.

1 MR. ZIBART: We join the objection, your Honor.
2 Mr. Murphy has more or less admitted that this is,
3 you know, surrebuttal or something. It's not proper
4 redirect.

5 MR. MURPHY: Your Honor, only further, I mean,
6 to the question about whether anybody is here,
7 Mr. Tomaso clearly has met expertise in land
8 planning. That's what his testimony is all about.

9 This was done by the same people who
10 he's already testified did the work on the other
11 places, and he is perfectly competent to testify as
12 an expert in land planning, how this is done and what
13 was done here.

14 ADMINISTRATIVE LAW JUDGE DOLAN: Is there a
15 reason that this wasn't disclosed prior?

16 MR. MURPHY: Because it was completed over the
17 weekend.

18 ADMINISTRATIVE LAW JUDGE DOLAN: I know that
19 the Commission obviously wants to try to obtain the
20 most -- most of the information possible in this
21 docket, but I think I have to sustain the objection
22 because I don't feel that any of the parties will

1 have a proper opportunity to do any discovery on this
2 matter. So I'm going to sustain that objection.

3 MR. MURPHY: Okay.

4 BY MR. MURPHY:

5 Q I guess, just so we understand, your
6 understanding of the infrastructure is no more than
7 what you've indicated?

8 A To best my knowledge, yes.

9 MR. MURPHY: Okay. No further redirect.

10 ADMINISTRATIVE LAW JUDGE DOLAN: Thank you.

11 MR. BRYAN: Limited.

12 REXCROSS-EXAMINATION

13 BY

14 MR. BRYAN:

15 Q Mr. Tomaso, Mr. Murphy asked you about
16 where in the Conservancy development you saw
17 infrastructure constructed and where you didn't see
18 it constructed. And to clarify, in your visits to
19 the property, were your -- was your inspection of the
20 property complete? In other words, did you walk the
21 entire property from north to south, east/west, full
22 track?

1 A No.

2 Q You didn't.

3 What parts did you not walk?

4 A The areas generally north of the Kishwaukee
5 and the areas that colored in teal. We spent -- I
6 spent time with staff walking the area that was north
7 of the models and south of the Kishwaukee.

8 Q Now, in respect to the areas that you
9 walked that you did not see infrastructure
10 installed -- and now I'm taking you back to your
11 review of the annexation agreement -- are you aware
12 of the extent to which bond issues and memoranda for
13 those bond issues have been prepared and are ready
14 and on the shelf for investors?

15 A No.

16 Q Okay. In your experience with developments
17 that have come into Huntley where bond issues were
18 structured for infrastructure, is it your experience
19 that a series of bond issues is arranged in advance?
20 In other words, prearranged so that they will be
21 staggered out over time?

22 A That's an option that could be considered

1 as it relates to the financing component of the
2 project.

3 Q But in the case of the Conservancy, you
4 don't know whether or not -- one way or the other if
5 that's what's in place today?

6 A I don't know that, no.

7 MR. BRYAN: That's all I have, Judge.

8 MR. HARVEY: Your Honor, I'd like to be
9 indulged here one question just for clarification.

10 CROSS-EXAMINATION

11 BY

12 MR. HARVEY:

13 Q Sorry, Mr. Tomaso, to prolong your agony
14 here. My name is Matt Harvey. I represent the
15 Commerce Commission staff.

16 You gave -- in response to a question
17 that Mr. Bryan asked, you indicated that you, in one
18 of your walking tours of the Conservancy, you had
19 done so with staff.

20 A Yes, sir.

21 Q That is not a reference to the Illinois
22 Commerce Commission staff?

1 A It's not a reference to the Illinois
2 Commerce Commission; correct.

3 MR. HARVEY: Thank you very much, sir.

4 ADMINISTRATIVE LAW JUDGE DOLAN: Anyone else?

5 All right. Thank you, Mr. Tomaso.

6 THE WITNESS: Thank you, sir.

7 ADMINISTRATIVE LAW JUDGE DOLAN: I just want to
8 take a quick break for five minutes, and we'll be
9 right back.

10 (Whereupon, a brief
11 recess was taken.)

12 ADMINISTRATIVE LAW JUDGE DOLAN: Go ahead.

13 MR. MURPHY: The Village of Huntley calls
14 Mr. Don Robinson.

15 ADMINISTRATIVE LAW JUDGE DOLAN: Hi,
16 Mr. Robinson. Please raise your right hand.

17
18
19
20
21
22

1 (Witness sworn.)

2 DON ROBINSON,

3 called as a witness herein, having been first duly

4 sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY

7 MR. MURPHY:

8 Q Mr. Robinson, would you please state your

9 name and spell it for the record and tell us where

10 you are employed.

11 A My name is Don Robinson, R-o-b-i-n-s-o-n.

12 I'm employed by Dry Utility Services, which is a

13 utility planning and consulting firm headquartered in

14 Phoenix, Arizona.

15 Q And on whose behalf are you here?

16 A I'm here on behalf of the Village of

17 Huntley.

18 Q Did you file any direct testimony in this

19 case?

20 A No.

21 Q Do you have in front of you what's been

22 marked as Huntley Exhibit 5.0?

1 A I do.

2 Q And does that consist of 11 pages of
3 questions and answers ending on Line 203?

4 A Yes, it does.

5 Q And are there two exhibits attached to it,
6 one being a one-page map and one being a multi-page
7 set of photographs?

8 A Yes.

9 Q And among the photographs that are included
10 in Huntley Exhibit 5.2, Photograph No. 6, is it
11 marked "corrected"?

12 A It is revised January 18 of 2008.

13 Q And that was corrected to replace the photo
14 that was originally included in that set when your
15 testimony was filed?

16 A Yes.

17 Q Okay. With that correction, if I were to
18 ask you the questions in your prepared rebuttal
19 testimony, would these be your answers?

20 A Yes, they would.

21 Q And are the exhibits to that accurate?

22 A Yes, they are.

1 MR. MURPHY: And I would note for the benefit
2 of the hearing examiner, I've given you the tracking
3 numbers both for the rebuttal testimony and for the
4 corrected exhibit.

5 With that, I would move for the
6 admission of Huntley Exhibit 5.0.

7 ADMINISTRATIVE LAW JUDGE DOLAN: Any objection?

8 MR. ZIBART: No objection.

9 MR. HARVEY: None from staff.

10 MR. BRYAN: No objection.

11 ADMINISTRATIVE LAW JUDGE DOLAN: All right.

12 Then Huntley Exhibit 5.0 along with Exhibits 5.1, and
13 5.2 will be admitted into the record.

14 (Whereupon, Huntley Exhibit
15 Nos. 5.0, 5.1, 5.2 were
16 admitted into evidence.)

17 MR. MURPHY: Thank you. The witness is
18 available for cross-examination.

19 ADMINISTRATIVE LAW JUDGE DOLAN: All right.
20 Mr. Zibart.

21 MR. ZIBART: Sure. I've just got a few
22 questions.

1 CROSS-EXAMINATION

2 BY

3 MR. ZIBART:

4 Q Good morning, Mr. Robinson?

5 A Good morning.

6 Q I'm going to -- in my questioning, I'm
7 going to use two terms which I think you'll be
8 familiar. I want to make sure that you and I are
9 speaking the same language. The two terms are
10 "route" and "alignment."

11 When I use the term "route," I mean
12 the conceptual location for the transmission line
13 such as what roads or property lines it follows.
14 Okay?

15 A Yes.

16 Q And when I use the term "alignment," I mean
17 the precise location of the line including the
18 locations or foundations of individual poles. Is
19 that clear?

20 A Yes, sir.

21 Q And is that -- is my use of those two terms
22 consistent with how you use them?

1 A Yes.

2 Q Now, in selecting an alignment for a
3 transmission line, one may take a number of
4 considerations into account; is that right?

5 A Yes.

6 Q For example, you might try to minimize the
7 amount of tree clearing?

8 A Right. Yes.

9 Q You might try to span certain things on the
10 ground, such as a road or a driveway or a small
11 wetland; is that right?

12 A Yes.

13 Q And you might deviate from a straight line
14 to avoid something that you can't easily move, like a
15 cell tower?

16 A Correct.

17 Q And you have looked at Huntley's proposed
18 modified Freeman/Galligan route and you have come up
19 with one possible alignment for the line within that
20 route; is that fair?

21 A No. I've basically come up with a route
22 that would be subject to refinement by Commonwealth

1 Edison engineers to tie down the specific alignment
2 within that general area.

3 Q So is it your testimony that you have not
4 suggested an alignment?

5 A Not specifically, no.

6 Q Okay. Have you performed a similar task in
7 terms of refining the route for the Kreutzer Road
8 route, or was that beyond the scope of your
9 engagement?

10 A I have not reviewed refinements on the
11 Kreutzer Road route.

12 Q Okay. So that would also be up to ComEd's
13 engineers when they do the engineering for the project
14 if that's the route that's selected?

15 A Yes, sir.

16 MR. ZIBART: I have no further questions for
17 Mr. Robinson.

18 ADMINISTRATIVE LAW JUDGE DOLAN: Thank you.

19 Mr. Lascari.

20

21

22

1 CROSS-EXAMINATION

2 BY

3 MR. LASCARI:

4 Q Good morning, Mr. Robinson. My name is
5 Scott Lascari. I represent Neumann Homes. I just
6 have a few questions. I just want to make sure I
7 understand your testimony.

8 A Yes, sir.

9 Q So your testimony is that you have visited
10 the site to make an assessment regarding the impacts
11 of the modify Freeman/Galligan route; is that
12 correct?

13 A That is correct.

14 Q And you made two visits to that site; is
15 that correct?

16 A At least two, yes.

17 Q At least two.

18 You made one visit on December 18th,
19 2007; is that correct?

20 A Yes, sir.

21 Q And Huntley Exhibit 5.2 attaches a series
22 of photographs taken on the morning of that visit;

1 correct?

2 A That is correct.

3 Q Okay. The first three photographs within
4 Huntley Exhibit 5.2, do those relate to the Neumann
5 Homes development known as the Conservancy?

6 A Yes, sir.

7 Q Okay. And you were the photographer --

8 A Yes, sir, I was.

9 Q -- that took those pictures?

10 And your testimony is that those
11 pictures fairly and accurately depict the scenes
12 depicted in those cap -- in the captions to those
13 pictures; is that correct?

14 A At the date and time that I was there, yes.
15 This is what was visible to the camera.

16 Q Okay. And then you visited the scene again
17 on January 9th, 2008; is that correct?

18 A Yes, sir.

19 Q And according to your testimony, when you
20 returned on January 9th, the snow that's depicted in
21 those pictures had melted giving you a clearer
22 picture of the infrastructure that was in place; is

1 that correct?

2 A From Galligan Road looking west to the tree
3 line, there's a north/south tree line that appears to
4 be roughly an eighth of a mile west of Galligan Road,
5 that area was visible on that date. And I was able
6 on Powers Road to walk probably a quarter to a half a
7 mile east.

8 The rest of the area between the two
9 north/south tree lines that are depicted on the
10 exhibits was significantly muddy, and I was able to
11 walk only from Freeman Road north to the exiting lift
12 station, which I believe is the second east/west
13 street north of Freeman Road. And at that point, the
14 conditions just were not conducive to walking any
15 further.

16 Q Okay. I think my question is actually a
17 lot simpler.

18 In your testimony, because the snow
19 had melted, you did have, when you walked the route,
20 a clearer picture of the infrastructure --

21 A Yes, sir.

22 Q -- is that correct?

1 A Yes.

2 Q Okay. Can you point me in your testimony
3 to the pictures that you took of the visit on
4 January 9th, 2008?

5 A There are no pictures in my testimony.

6 Q Did you take any pictures that day?

7 A Yes.

8 Q Do you have them here that I could see
9 them?

10 A I have the picture that would be equivalent
11 to Photograph 1 because I stood on Galligan Road
12 taking a picture to the west.

13 Q And do you have pictures of Photographs 2
14 and 3?

15 A No. That area, I tried to get off the road
16 and sunk immediately over my shoes, and decided
17 that -- the snow had just melted. It had been a very
18 wet time and the ground was saturated.

19 Q Can you just give me a minute to look at
20 this?

21 A Absolutely.

22 Q Thank you.

1 Okay. So, Mr. Robinson, if I'm
2 misstating your testimony -- I'm looking at Page 11
3 of your rebuttal testimony. So as I understand it,
4 your testimony is, the area depicted in this picture
5 appears to be plowed and planned in the near future
6 for agricultural uses?

7 A That was my assessment based on the surface
8 of the ground that appeared to be tilled.

9 Q Is there any other potential use, aside
10 from agricultural, that could be depicted there?

11 A Probably.

12 Q Such as a development, a residential
13 development?

14 A I would say, based on the conditions that
15 were there, it would take significant grading and a
16 major change to the surface to develop houses.

17 I'm aware your map shows future
18 houses, but there are no roads that were graded in
19 that area. There were no visible fire hydrants.
20 There are the manholes that we all have acknowledged
21 have been there since day one that don't appear to be
22 in a linear configuration associated with the

1 development of streets.

2 Q And I understand that to be your testimony.

3 I just want to make certain -- is it your testimony

4 that agricultural use is the only use for that

5 property?

6 A No, it is not.

7 Q And residential use a potential use of that

8 property?

9 A With modifications to the ground, yes.

10 Q Okay.

11 MR. LASCARI: Then I have knowing further, your

12 Honor.

13 ADMINISTRATIVE LAW JUDGE DOLAN: Thank you.

14 Mr. Bryan?

15 MR. BRYAN: No cross, Judge.

16 ADMINISTRATIVE LAW JUDGE DOLAN: Okay. Any

17 redirect?

18 MR. MURPHY: No.

19 ADMINISTRATIVE LAW JUDGE DOLAN: All right.

20 Thank you, Mr. Robinson.

21 THE WITNESS: Thank you.

22 ADMINISTRATIVE LAW JUDGE DOLAN: Go off the

1 record.

2 (Whereupon, a discussion
3 was had off the record.)

4 ADMINISTRATIVE LAW JUDGE DOLAN: Back on the
5 record.

6 Mr. Moore, are you ready to proceed?

7 MR. MOORE: Yes, I am.

8 I call Mr. Howard E. Reid.

9 ADMINISTRATIVE LAW JUDGE DOLAN: Good morning,
10 Mr. Reid. Please raise your right hand.

11 (Witness sworn.)

12 HOWARD E. REID,
13 called as a witness herein, having been first duly
14 sworn, was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY

17 MR. MOORE:

18 Q Could you please state your name.

19 A Howard Reid.

20 Q And I show you what has been marked as Reid
21 Exhibit No. 1.0. Is this your testimony?

22 A Yes, it is.

1 Q And did you prepare this testimony or was
2 it prepared under your direction?

3 A Yes. Together, we did it.

4 Q And if I ask you the same questions today,
5 would you give the same answers?

6 A I would.

7 MR. MOORE: I move into evidence Reid Exhibit
8 No. 1.

9 ADMINISTRATIVE LAW JUDGE DOLAN: Any
10 objections?

11 MR. HARVEY: None from staff, your Honor.

12 MR. LASCARI: No objection, you Honor.

13 ADMINISTRATIVE LAW JUDGE DOLAN: All right.
14 Then Reid Exhibit 1.0 will be admitted into the
15 record.

16 (Whereupon, Reid Exhibit No. 1.0
17 was admitted into evidence.)

18 ADMINISTRATIVE LAW JUDGE DOLAN: I don't
19 believe anyone had any questions.

20 MS. LICUP: I just have a few.

21

22

1 CROSS-EXAMINATION

2 BY

3 MS. LICUP:

4 Q Mr. Reid, my name is Katie Licup. I'm an
5 attorney for Commonwealth Edison.

6 You are the property owner of Reid
7 Araley; is that correct?

8 A Yes, I am.

9 Q And did you prepare, either yourself or
10 with your counsel's assistance, responses to data
11 requests in this docket?

12 A Say that again.

13 Q Did you prepare responses, either yourself
14 or with the help of your lawyer, responses to data
15 requests that ComEd issued you in this docket?

16 A Yes.

17 Q And I'm going to hand you five data
18 requests. And these I'm marking ComEd Cross
19 Exhibits 1.0, through 1.05.

20 Mr. Reid, could you take a look at
21 those data request responses, and could you tell me
22 if you're familiar with those?

1 A To a degree.

2 Q Okay. Are there any that you are not
3 familiar with?

4 A I'm not familiar with that purchase.

5 Q And, Mr. Reid -- for the record, these are
6 data requests originally ComEd 1.07, 2.01, 2.02,
7 2.03, 2.04. If I ask you these questions today,
8 would your answers be the same?

9 A They would be, except with respect to that.

10 Q And which one is it that you --

11 A 2.03.

12 Q I'll read the -- 2.03 asks: Did Mr. Reid
13 purchase this property on which he built the Reid
14 Araley before or after the Illinois Toll Highway
15 Authority purchased the strip of property on which
16 the Jane Addams Memorial Tollway was constructed.
17 And can you tell me your response to that?

18 A The response is, yes, except that it was in
19 negotiation for a long time prior to that.

20 MS. LICUP: I have no further questions. I
21 would like to move into evidence ComEd Cross
22 Exhibit 1.1 through 1.05.

1 MR. MOORE: I have no objection.

2 MR. HARVEY: None from staff, your Honor.

3 MR. LASCARI: No objection.

4 ADMINISTRATIVE LAW JUDGE DOLAN: All right.

5 Then ComEd Cross Exhibits 1.01 through 1.05 will be

6 admitted into the record.

7 (Whereupon, ComEd Cross Exhibit

8 Nos. 1.01-1.05 were admitted

9 into evidence.)

10 ADMINISTRATIVE LAW JUDGE DOLAN: Any redirect?

11 MR. MOORE: No.

12 ADMINISTRATIVE LAW JUDGE DOLAN: Okay. Thank

13 you, Mr. Reid.

14 MR. MOORE: I'd like to call Bruce Starreburg.

15 (Witness sworn.)

16 BRUCE E. STARREBURG,

17 called as a witness herein, having been first duly

18 sworn, was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY

21 MR. MOORE:

22 Q Could you please state your full name.

1 A Bruce E. Starreburg.

2 Q And I show you what has been marked for
3 identification as Reid Exhibit 2.0 and consisting of
4 18 pages of written testimony and attachments of 2.1
5 through 2.9. Is this your testimony?

6 A It is.

7 Q And did you prepare this testimony?

8 A I did.

9 Q And if asked the same questions today,
10 would you give the same answers?

11 A Yes, I would.

12 Q And now I show what has been marked for
13 identification as Reid Exhibit 3.0 identified as
14 Reply Testimony of Bruce Starreburg consisting of two
15 pages of questions and answers.

16 Did you prepare this testimony?

17 A I did.

18 Q And if asked the same questions today,
19 would you give the same answers?

20 A Yes, I would.

21 MR. MOORE: At this time, your Honor, I would
22 move into evidence Reid Exhibits 2.0 and 3.0.

1 ADMINISTRATIVE LAW JUDGE DOLAN: Any
2 objections?

3 MR. LASCARI: No objection.

4 MR. HARVEY: None from staff.

5 ADMINISTRATIVE LAW JUDGE DOLAN: All right.
6 Then Reid Exhibit 2.0 along with attachments 2.1
7 through 2.9 would be admitted into the record. And
8 Reid Exhibit 3.0 will also be admitted into the
9 record.

10 (Whereupon, Reid Exhibit No. 2.0
11 with attachments was admitted
12 into evidence.)

13 MR. MOORE: At this point, I offer the witness
14 for cross-examination.

15 CROSS-EXAMINATION

16 BY

17 MS. LICUP:

18 Q Mr. Starreburg, my name is Katie Licup.
19 I'm an attorney for Commonwealth Edison.
20 First of all, is it correct that
21 Mr. Reid is your father-in-law?

22 A That's correct.

1 Q And do you live on the same -- on his
2 property?

3 A That's correct.

4 Q Do you live in a separate house on his
5 property?

6 A Yes, I do.

7 Q Do you utilize the Reid -- the landing area
8 for business use?

9 A Yes, I do.

10 Q And for personal use also?

11 A Correct.

12 Q Do you use your airstrip year around?

13 A Yes, we do.

14 Q And can you take off or land in the winter?

15 A Weather permitting, yeah. Depending on the
16 condition of the ground surface.

17 Q What is that ground surface dependent on?

18 A It depends on how saturated the ground is
19 or if there's snow on the runway.

20 Q Mr. Starreburg, you said in your rebuttal
21 testimony that the modified Freeman/Galligan route
22 would impact both your north/south and your east/west

1 runways; is that correct?

2 A That is correct.

3 Q And can you explain why?

4 A Well, I think the east/west impact is

5 obviously, as recognized with all the routes. The

6 north/south, the modified Freeman/Galligan route

7 would create an obstruction for the north approach of

8 the north/south runway and the distance being

9 actually closer on the north end on the Freeman route

10 than it is on the south end of the tollway of the

11 south -- southern approach to the north/south runway.

12 It's actually closer distance between

13 where the proposed Freeman/Galligan route is. That

14 position of that line will be closer relative to the

15 take off departure end of that runway.

16 Q And to clarify, is the obstruction the same

17 with either the modified Freeman/Galligan route or

18 the original Freeman/Galligan route?

19 A Can you ask me that again.

20 Q Would the same obstruction exist with the

21 modified Freeman/Galligan route or the original

22 Freeman/Galligan route?

1 A On the north/south runway, yes.

2 Q You also testified in your rebuttal

3 testimony that your wife, Linda, was Mr. Reid's

4 daughter?

5 A Nancy.

6 Q Or Nancy. I'm sorry. That Nancy, your

7 wife, had worked with the Kane County Forest Preserve

8 to oppose the Freeman/Galligan route; is that

9 correct?

10 A They had discussion about it. My wife is a

11 nature lover and we have an interest with the forest

12 preserve in interacting with them, and she had

13 interaction with Monica Meyers who's the director of

14 the Kane County Forest Preserve; and she expressed

15 her opposition to the Freeman/Galligan route in that

16 it traverses a lot of forest preserve assets there

17 that we feel should be preserved.

18 MR. MURPHY: Your Honor, I'm going to interpose

19 an objection here. I'm not really sure who she is in

20 that sentence; but in either case, counsel is

21 eliciting hearsay and the witness is simply repeating

22 hearsay.

1 MS. LICUP: Your Honor, the statement is in his
2 rebuttal testimony at Lines 18 through 31.

3 MR. MOORE: Your Honor, if I could add in, I
4 oppose the objection that he is giving a response not
5 talking about conversations at this point. He's
6 talking about what he knows his wife has done.

7 MR. MURPHY: His testimony says his wife has
8 advocated, and his testimony is what it is; but ask
9 what she said to Ms. Meyers or what Ms. Meyers said
10 to her is stark hearsay.

11 MS. LICUP: For the record, I didn't ask that
12 question. I asked what his testimony was.

13 ADMINISTRATIVE LAW JUDGE DOLAN: Well, to the
14 extent that I do agree that it's hearsay what he says
15 for the end part. So why don't we -- why don't
16 you -- I'll sustain the objection. And why don't you
17 reask it just limiting to the testimony.

18 MS. LICUP: Okay.

19 BY MS. LICUP:

20 Q Mr. Starreburg, at Lines 25 through 28 of
21 your rebuttal testimony, could you read the sentence
22 that starts, "In addition."

1 A In addition to the adversity to the
2 airport, Nancy Starreburg, wife of Bruce Starreburg
3 and daughter of Howard Reid, has personally worked
4 closely with the Kane County Forest Preserve
5 director, Monica Meyers, to oppose the
6 Freeman/Galligan route.

7 Moreover, no communication or contact
8 regarding our opinion of the modified
9 Freeman/Galligan route has taken place between the
10 Reids or the Starreburgs and the village officials or
11 expert witness.

12 Q Is that a true and correct statement?

13 A That is true and correct.

14 MS. LICUP: I have no further questions.

15 ADMINISTRATIVE LAW JUDGE DOLAN: Thank you.

16 Did you have any questions?

17 MR. MURPHY: No.

18 MR. MOORE: I have no redirect.

19 ADMINISTRATIVE LAW JUDGE DOLAN: Okay. Thank
20 you, Mr. Starreburg.

21 Mr. Shay, you have Mr. Burn ready?

22 MR. SHAY: Yes.

1 Please state your full name for the
2 record.

3 THE WITNESS: My name is William J. Byrne,
4 B-y-r-n-e, junior.

5 ADMINISTRATIVE LAW JUDGE DOLAN: Mr. Byrne,
6 please raise your right hand.

7 (Witness sworn.)

8 ADMINISTRATIVE LAW JUDGE DOLAN: Okay.
9 Proceed, counsel.

10 MR. SHAY: For the record, Judge, I have
11 tracking numbers I'd like to read into the record.

12 ADMINISTRATIVE LAW JUDGE DOLAN: Okay.

13 MR. SHAY: For the direct testimony and
14 attached exhibits, that number is 85721; and for the
15 rebuttal, the number is 88175.

16 WILLIAM J. BYRNE, JR.,
17 called as a witness herein, having been first duly
18 sworn, was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY

21 MR. SHAY:

22 Q Mr. Byrne, do you have in front of you a

1 document marked KRP Exhibit 1.0, labeled Direct
2 Testimony of William Byrne, Junior?

3 A Yes, I do.

4 Q And are there exhibits attached and
5 accompany -- attached to and that accompany your
6 direct testimony Nos. 1.2, 1.3, 1.4-A, 1.4-B and
7 1.4-C?

8 A I don't have the exact copy of that, but I
9 know that it's noted in here.

10 Q Do you see those now?

11 A Yes, I see the attachments.

12 I apologize. I actually have the
13 original ones in my file. I don't have copies. Yes,
14 I do have hem.

15 Q Did you cause your direct testimony
16 Exhibit 1.0 to be prepared?

17 A Yes.

18 Q And are the answers to the questions
19 contained in your direct testimony true and correct
20 to the best of your knowledge?

21 A Yes.

22 Q And to the best of your knowledge, is the

1 information contained in the accompanying exhibits
2 that we just read into the record also true and
3 correct?

4 A Yes.

5 Q Do you also have in front of you a document
6 marked KRP Exhibit 2.0 labeled Rebuttal Testimony of
7 William Byrne, Junior?

8 A Yes.

9 Q And did you cause Exhibit 2.0 to be
10 prepared?

11 A Yes.

12 Q Are the answers to the questions contained
13 in Exhibit 2.0 true and correct to the best your
14 knowledge?

15 A Yes.

16 MR. SHAY: Thank you.

17 At this time, your Honor, I would move
18 into the record Exhibits 1.0, 1.2, 1.3, 1.4-A, 1.4-B,
19 1.4-C and Exhibit 2.0.

20 ADMINISTRATIVE LAW JUDGE DOLAN: And just to
21 the clarify the record, there is no Exhibit 1.1; is
22 that correct?

1 MS. LICUP: Thank you, your Honor.

2 CROSS-EXAMINATION

3 BY

4 MS. LICUP:

5 Q Mr. Byrne, I'm Katie Licup. I'm the
6 attorney for Commonwealth Edison. For reference, I'm
7 going to put up 12.0.

8 This is a chart of the proposed
9 routes. And I'm pointing to the blue line that's
10 horizontal across the top of ComEd Exhibit 12.20.

11 Mr. Byrne, if the Village of Huntley
12 were to widen Kreutzer Road from two lanes to five
13 lanes, an extra roadway is all on the south side of
14 Kreutzer Road, what effect would that have on the
15 Kreutzer farm?

16 A That would take some of the land that
17 belongs to the Kreutzers in order to build the road.

18 Q What effect would it have on the farmhouse
19 adjacent to the south side of Kreutzer Road?

20 MR. SHAY: I'm sorry, I just want to make sure
21 I understand the question. I'm not objecting to this
22 point. Was it -- the question based on the

1 assumption that the entire portion of the widening of
2 Kreutzer Road would occur to the south and not
3 equally to the south and north?

4 MS. LICUP: That's correct.

5 MR. SHAY: Thank you.

6 THE WITNESS: If the road was only widened on
7 the south side of the road, the house that is on the
8 south side of the road would have to be demolished.

9 BY MS. LICUP:

10 Q What crops are grown on the Kreutzer farm?

11 A There is corn -- to my knowledge, with
12 speaking with the farmer, there is corn. There are
13 beans. There's pumpkins, and also there is honey
14 that is -- I don't know if you call it grown. It's
15 cultivated from the bees. There's an area where
16 bees -- on the farm as well.

17 Q Do you know what equipment is needed to
18 seed the farmland?

19 A No. I'm not a farmer.

20 Q Do you have any idea what equipment is used
21 to harvest the crops?

22 A Only in seeing the equipment that belonged

1 to my wife's family, just from visual inspection of
2 the equipment. I know there is a lot of equipment;
3 but to know exactly what it's called, I do not know
4 that answer.

5 Q Mr. Byrne, in your direct testimony in
6 Exhibit 1.0 at Lines 72 and 73, you state that the
7 transmission structures and lines will damage the
8 operations and integrity of the farm. Can you
9 explain what you mean by that?

10 A My answer to lines -- that would be Line 72
11 No. 4; correct?

12 Q Yes, sir.

13 A My answer to that would be, during the
14 building of the transmission lines with the
15 construction equipment and the concrete being put in
16 the ground, it would probably halt the production of
17 what's being utilized as farm agriculture usage.
18 There's a tenant that rents to do that.

19 And also if the power lines are put
20 in, it will take away from the view of the farm,
21 because it's been in the family for so long, it's a
22 centennial farm, just short of a sesquicentennial

1 farm. It's 140 years in the same family.

2 Q And you're saying that based on your
3 understanding, not as a farmer, but on your
4 understanding as part of the family that owns the
5 farm?

6 A Yes.

7 Q Mr. Tomaso from the Village of Huntley
8 testified that the transmission line will be a
9 barrier to the development of the commercial
10 corridor, the artery that Huntley would like to see
11 on Kreutzer Road. Isn't that actually a reason to
12 favor the transmission line if it would limit the
13 development along Kreutzer Road?

14 A Could you ask me that again.

15 Q Mr. Tomaso said that the transmission line
16 along Kreutzer Road, that it would damage that road
17 from being a -- that it would provide a barrier to
18 the development of Kreutzer Road. Wouldn't that
19 actually be a reason for you to favor a transmission
20 line if the development along Kreutzer Road were
21 otherwise to be limited?

22 A If the power lines are put in, I believe

1 that that would change the view of the farm because
2 my wife and I are going to move back to the farm to
3 build a home. And any type of power lines is going
4 to ruin the aesthetics of the farm and also the
5 centennial -- and the sesquicentennial designation of
6 the farm.

7 Q Okay. Is it correct that you applied for
8 three or four centennial farms certificates in
9 August 2007?

10 A Yes. I did apply for the centennial
11 designations in late August because all the years
12 that I've been involved with the family, I was under
13 the interpretation that the whole farm was a
14 centennial designated farm.

15 And when I applied for the other
16 centennial designation portions of the farm, some of
17 the farm was duplicated and I was not aware of that.
18 So, therefore, we have a double -- I guess it would
19 be a duplication of a centennial to two portions of
20 the farm because the farm is split -- it would be,
21 like, considered split in three sections. Or,
22 actually, technically four.

1 Q When did you realize that the whole farm is
2 not covered by the centennial certificate?

3 A I believe it was in July. I was -- again,
4 I was under the assumption that the whole farm was
5 centennial designation, and I was told at that point
6 only three-quarters of the farm was centennial
7 designation.

8 Q And who told you that?

9 A My wife's aunt.

10 Q And what is her name?

11 A Marie Caranci, C-a-r-a-n-c-i.

12 Q Mr. Byrne, you've provided several
13 documents from developers and correspondence from
14 developers and notes that Mrs. Frances Kreutzer had
15 written based on conversations that she had had with
16 developers in response to a ComEd data request.

17 Is it fair to say that you have had
18 multiple offers to purchase your property in the last
19 ten years?

20 A Yes, it would be fair to say that.

21 Q And you, however, intend to continue
22 farming that land and maintaining it as a farm; is

1 that correct?

2 A As long as we possibly, can, yes.

3 MS. LICUP: I have no further questions.

4 ADMINISTRATIVE LAW JUDGE DOLAN: Thank you.

5 Mr. Lascari.

6 MR. LASCARI: I have no questions for this

7 witness, your Honor.

8 ADMINISTRATIVE LAW JUDGE DOLAN: Mr. Bryan?

9 MR. BRYAN: Judge, no questions.

10 ADMINISTRATIVE LAW JUDGE DOLAN: Okay. No one

11 else; right?

12 Mr. Shay, any redirect?

13 MR. SHAY: None, your Honor.

14 ADMINISTRATIVE LAW JUDGE DOLAN: Thank you.

15 THE WITNESS: You're welcome.

16 ADMINISTRATIVE LAW JUDGE DOLAN: It looks like

17 we're up to Mr. Murphy -- I'm sorry, Mr. Walsh, it

18 looks like.

19 MR. MURPHY: Walsh before Keller?

20 ADMINISTRATIVE LAW JUDGE DOLAN: Keller is

21 listed as the last witness.

22

1 (Whereupon, a discussion
2 was had off the record.)

3 ADMINISTRATIVE LAW JUDGE DOLAN: Back on the
4 record.

5 MR. MURPHY: I distributed to counsel yesterday
6 and would like to mark and move for admission as
7 Huntley Cross Exhibits 7, 8 and 9, I believe.

8 The responses that Huntley received
9 from Neumann Homes to its data requests No. 2.5, 2.6
10 and 2.7, I believe each one of these constitutes an
11 admission against interest on the part of Neumann
12 Homes and, therefore, it's appropriate to admit them
13 into the record without the benefit of a witness
14 since Neumann Homes has not provided a witness in
15 this docket.

16 ADMINISTRATIVE LAW JUDGE DOLAN: Is there any
17 objection?

18 MR. LASCARI: Well, I don't have a specific
19 objection to the responses that Mr. Murphy wants to
20 admit. However, for the completeness of the record,
21 I think if Mr. Murphy wants to admit the data
22 requests, he should admit the entire set.

1 If he is asserting that they're
2 against the party interests, the entire set should be
3 allowed. It should be a complete set. Under Section
4 200.670 of the Commerce Commission practice, if
5 someone wants to submit a document into evidence and
6 for completeness purposes, the rest should be
7 submitted. I assert in this case, the entire data
8 request should be submitted.

9 MR. MURPHY: Just to be clear, the data --
10 there are a number of different data requests; so it
11 was actually 2.1 through 2.7, and there are different
12 responses to different data questions. So this is
13 not a single document.

14 I believe that -- I don't believe it's
15 appropriate and I don't believe that I'm obligated to
16 put in answers to all data requests. I can literally
17 pick and choose the ones that I believe are
18 admissions against interest and move for their
19 admission.

20 ADMINISTRATIVE LAW JUDGE DOLAN: I think, you
21 know, Mr. Lascari, if you want, I will allow him to
22 put these ones in. And then if you want to put the

1 rest of them in, why don't we do it that way. And
2 then that way we will ensure that there's a complete
3 set in the record.

4 MR. LASCARI: Okay. Thank you, your Honor.

5 MR. HARVEY: Counsel, for my own clarification,
6 what were these numbers?

7 MR. MURPHY: They are being numbered -- and let
8 me give them to the judge. They are being
9 numbered -- let me get this straight.

10 The response to Huntley data request
11 Neumann No. 2, dash, 5, that response will be
12 numbered Huntley Cross Exhibit 7. The response to
13 Huntley data request Neumann No. 2, dash, 6 will be
14 marked as Huntley Cross Exhibit 8. And the response
15 to Huntley data request No. -- I'm sorry, Huntley
16 data request Neumann No. -- wait a second.

17 I'm sorry, did I just say -- it should
18 be 2-5 is 7; 2-6 is 8 and 2-7 is 9.

19 MR. HARVEY: Thank you very much, counsel.

20 MR. LASCARI: Joe, do you happen to have an
21 extra set.

22 MR. MURPHY: I'm trying to put those together

1 here.

2 ADMINISTRATIVE LAW JUDGE DOLAN: Okay. Then
3 Huntley Cross Exhibits No. 7, 8, and 9 will be
4 admitted into the record.

5 (Whereupon, Huntley Cross
6 Exhibit Nos. 7, 8, 9 were
7 admitted into evidence.)

8 ADMINISTRATIVE LAW JUDGE DOLAN: And with that,
9 Mr. Bryan, are you ready to proceed?

10 MR. BRYAN: We are, Judge. Thank you.

11 The witness for Indymac Bank FSB is
12 Brian Walsh. It's B-r-i-a-n. Middle initial?

13 THE WITNESS: M.

14 MR. BRYAN: M. Walsh, W-a-l-s-h.

15 ADMINISTRATIVE LAW JUDGE DOLAN: All right.
16 Mr. Walsh, please raise your right hand.

17

18

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22

1 (Witness sworn.)

2 BRIAN M. WALSH,

3 called as a witness herein, having been first duly
4 sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY

7 MR. BRYAN:

8 Q Mr. Walsh, good morning.

9 A Good morning.

10 Q In front of you is what's been marked
11 Indymac Exhibit 1.0 and I have three copies for the
12 Commission. And I'll circulate copies right now.
13 I'm circulating these copies because we did not file
14 by electronic transmission.

15 Mr. Walsh, is what I've shown you your
16 prepared rebuttal testimony in this docket?

17 A Yes, it is.

18 Q And does this testimony consist of
19 approximately one and a half -- one an one-half pages
20 on the first page ending with Line 26 and the second
21 page ending with Line 12?

22 A Yes.

1 Q This testimony you prepared with the
2 assistance of counsel?

3 A Yes.

4 Q And you signed this testimony on Page 2?

5 A Yes, sir.

6 Q As you look at these answers now, can you
7 testify that they are accurate as written?

8 A Yes.

9 Q And would your answers to these questions
10 be the same if I asked you them today?

11 A Yes, they would.

12 MR. BRYAN: Your Honor, I would ask for
13 admission for Indymac Exhibit 1.0.

14 ADMINISTRATIVE LAW JUDGE DOLAN: Any
15 objections?

16 MR. MURPHY: Your Honor, I have a request to
17 strike a couple of elements of his rebuttal
18 testimony.

19 Initially, I would move to strike from
20 it the Line 16 through 19, which is a question about
21 Indymac's investment but it purports -- it actually
22 purports about what Neumann Homes has expended. And

1 I believe it's simply hearsay.

2 ADMINISTRATIVE LAW JUDGE DOLAN: Counsel?

3 MR. BRYAN: Your Honor, if I may, I think the
4 testimony will clarify why this answer -- although,
5 it doesn't directly answer the question, why it is
6 relevant and is pertinent to the question. It
7 addresses question but not directly. That can be
8 clarified through questions on direct -- on further
9 direct.

10 MR. MURPHY: I don't believe that further
11 direct is appropriate.

12 MR. BRYAN: Your Honor, if I may respond to
13 counsel's position on the appropriateness of further
14 direct.

15 Your Honor, while dates were set for
16 direct, I don't think it's a mystery to anyone
17 participating in this proceeding that Indymac -- for
18 some reason I became aware of this proceeding at a
19 later time than optimal.

20 Indymac is secured lender of the
21 property. It's -- one of the properties involve here
22 the Conservancy in Gilberts. It is -- it has not

1 been directly involved with the subject matter of
2 these proceedings, and its involvement developed more
3 significantly as a result of the very recent Neumann
4 Homes bankruptcy petition file.

5 So on that basis, I would ask for some
6 latitude in offering additional direct, which I
7 believe your Honor has the authority to allow. And I
8 also suggest that additional direct will be helpful
9 to these proceedings.

10 ADMINISTRATIVE LAW JUDGE DOLAN: I think under
11 the circumstances, I will allow him to attempt to
12 qualify that answer. And then if he can't, then
13 we'll strike it.

14 MR. BRYAN: Thank you, Judge.

15 MR. MURPHY: And then the other element, your
16 Honor, I would move to strike the question and answer
17 on Page 2. I believe it's the signature page that go
18 from Line 7 to Line 12 where the witness purports to
19 assert the value of Indymac Bank's collateral and the
20 force perspective to spend whatever it's supposed to
21 spend.

22 The testimony doesn't really provide

1 any basis for that statement and under -- what the
2 testimony that's in front of us, that is fully
3 speculative.

4 MR. BRYAN: Your Honor, there were two parts to
5 that objection, which I'll dress when you're ready.

6 ADMINISTRATIVE LAW JUDGE DOLAN: Go ahead.
7 Proceed.

8 MR. BRYAN: Your Honor, the -- this answer does
9 address the question and more directly than the
10 previous question we discussed, this answer does
11 address the question of what impact the modify
12 Freeman/Galligan Parlon route would have on Indymac's
13 interest in the property. And addressing the value
14 in the collateral concerns Indymac's interest in the
15 property. Indymac is the secured lender. The value
16 of the property is Indymac's interest.

17 Now it's speculative. I don't think
18 there's anything in this testimony or anything that
19 Mr. Murphy offers that shows this as speculative, and
20 I believe that the testimony will show that it's not
21 speculative. And I reiterate the comments I made
22 previously with respect to the last objection.

1 MR. MURPHY: And, your Honor, the testimony
2 that Mr. Walsh has submitted, it's in front of us.
3 It's two pages. He asserts in this very last part
4 what a perspective purchaser will spend to modify the
5 existing development.

6 Now, we're all under a tight schedule
7 here. We have all done what we can to address a
8 tight schedule. But I have a last-minute intervenor
9 who filed testimony. Their first appearance was the
10 day that rebuttal testimony was filed, and he asserts
11 that this is going to damage them to the tune of
12 millions.

13 Like everybody else, I haven't had a
14 chance to do discovery on Indymac Bank and on
15 Mr. Walsh; and he had a chance -- he had an
16 opportunity when he created his testimony to provide
17 a basis for that and he didn't do it.

18 MR. BRYAN: Your Honor, if I may.

19 ADMINISTRATIVE LAW JUDGE DOLAN: Sure.

20 MR. BRYAN: To that point, the damage and the
21 impact to Indymac's Bank is relevant. I agree with
22 Mr. Murphy in that regard, but what's equally or more

1 relevant is the plan that Mr. Walsh refers to in his
2 testimony about the ultimate disposition of the
3 Conservancy and the likelihood that that property
4 will be developed to completion, and that the homes
5 that are planned and mapped out and annexed and
6 platted will be completed.

7 And I suggest to your Honor that
8 Mr. Walsh is the witness available in this proceeding
9 that is best positioned to advise the Commission
10 about the prospects of completing the Conservancy as
11 a residential development. And that's why this
12 testimony should be allowed.

13 And, yes, it's going to involve
14 potential harm to Indymac Bank. No question. But
15 that's not the only important part of his testimony.
16 And it's not going to unduly extend these
17 proceedings, and we respect the tight schedule that
18 everyone is on.

19 MR. MURPHY: Very briefly. I'm sorry. No one
20 is contesting -- at least the Village of Huntley is
21 not contesting that Neumann Homes will never be
22 built. The issue is the financial impact on Neumann

1 Homes if the modified Freeman/Galligan route is
2 adopted by the Commission.

3 This witness claims it will have
4 millions of dollars. I see nothing in his testimony
5 that explains the basis for saying that. I'm done.

6 ADMINISTRATIVE LAW JUDGE DOLAN: All right.
7 I'm going to overrule the objection, and I'm going to
8 allow it into the record.

9 (Whereupon, Indymac Exhibit
10 No. 1.0 was admitted into
11 evidence.)

12 MR. BRYAN: Thank you, Judge. We'll proceed.

13 BY MR. BRYAN:

14 Q Mr. Walsh, what is your occupation?

15 A I'm a regional manager for Indymac Bank.

16 Q How long have you been employed by Indymac?

17 A Approximately 18 months.

18 Q What's your current position?

19 A I'm a regional manager for the northeast,
20 including Chicago, Boston, New York and Philadelphia.

21 Q What undergraduate and graduate degrees
22 have you received?

1 A I have a BA in economics from Northwestern
2 University and an MBA from the University of
3 Michigan.

4 Q How long have you been in the banking
5 industry?

6 A 21 years.

7 Q And, in general, what specialization have
8 you had over those 21 years in real estate and
9 commercial real estate lending?

10 A I would say that I've been a real estate
11 specialist for the last 15 years and a home builder
12 finance specialist for the last nine years.

13 Q In the course of that specialization and
14 presently, what's your familiarity with foreclosing
15 on commercial real estate when the mortgage loan is
16 in default?

17 A Well, we haven't had too much foreclosure
18 activity in the last ten years because the markets
19 have been pretty good.

20 Back in the early '90s, I was involved
21 in four different individual real estate transactions
22 that involved a foreclosure, not with Indymac, with a

1 previous employer.

2 Since the real estate markets have
3 gotten -- since the residential real estate markets
4 have gotten weaker in the last two years, at Indymac
5 Bank, I've been involved in two preliminary
6 bankruptcy, slash, foreclosure negotiations in
7 addition to the Neumann Homes bankruptcy.

8 Regarding the Neumann Homes
9 bankruptcy, I've been closely involved with the
10 bankruptcy proceedings since the company filed for
11 Chapter 11 on October 31st, 2007.

12 Q And at what point in your employment with
13 Indymac did you first become, you know, assigned and
14 responsible for the Neumann Homes matter?

15 A I've been associated with the Neumann Homes
16 matter and responsible for it since I started in June
17 of '06.

18 Q When did Neumann Homes -- approximately
19 when did Neumann Homes file its bankruptcy petition?

20 A I believe it was October 31st, 2007.

21 Q And immediately before the bankruptcy
22 petition file, what was the general structure of the

1 Indymac loan agreement with Neumann Homes?

2 A Indymac provided a -- what we call a
3 borrowing base. It is a credit facility that's
4 designed to finance multiple real estate projects in
5 a single facility. The bank provides availability
6 based on the borrower's assets, asset base that's in
7 the facility. And it is a secured facility, meaning
8 we have mortgages against all the properties in the
9 facility. And it's what we call
10 cross-collateralized, meaning all the properties in
11 the facility secure all the debt in the facility even
12 though the dollars are allocated sort of project by
13 project.

14 Q And what was the combined total loan
15 balance at the time the bankruptcy petition?

16 A Approximately \$35 million.

17 Q And what was --

18 MR. SHAY: Excuse me, I'm going to object
19 unless it's clarified as to whether those 35 million
20 was balance with respect to this particular project
21 or with respect to the facility overall to which the
22 witness just testified. If you can just clarify.

1 MR. BRYAN: Be glad to.

2 BY MR. BRYAN:

3 Q What is the total available credit facility
4 on this loan agreement?

5 A The total availability at the time of the
6 bankruptcy was approximately \$35 million.

7 Q Is that the amount that was outstanding or
8 is that the total amount that was ever available?

9 I'm looking for what the maximum
10 amount of Neumann Homes was allowed to borrow in that
11 facility?

12 A The amount in the actual credit facility at
13 one point was \$100 million. And so at the high
14 watermark our mortgage face amount was \$100 million,
15 and we had a note for \$100 million.

16 The actual outstandings at the time of
17 the bankruptcy was about \$35 million in aggregate for
18 the entire credit facility.

19 Q Okay. Now, do you know what portion of the
20 Indymac loan proceeds to Neumann Homes was used for
21 buying the raw real estate that's known as
22 Conservancy?

1 A I believe approximately \$12 million is the
2 original basis for the land and the Conservancy.

3 Q Okay. When you say original basis, would
4 you explain what that means.

5 A It was \$12 million of Neumann's original
6 cost. The land parcels in the Conservancy were
7 acquired, I believe, beginning in 1999. The last one
8 that was acquired was in 2005.

9 So over that time, irrespective of
10 value, where the value is today or where the value
11 was two years ago, those were the original costs what
12 we call accounting basis for the purchases.

13 Q Do you know what portion of the Indymac
14 loan proceeds to Neumann Homes was used for financing
15 infrastructure construction, either on site or off
16 site?

17 A For the Conservancy?

18 Q Yes.

19 A None.

20 Q None were?

21 A None of our proceeds, no, no, were used for
22 any of that development.

1 Q Okay. Do you know personally or have you
2 inquired and determined the approximate amount that
3 was -- that Neumann Homes spent on on-site or
4 off-site infrastructure?

5 MR. MURPHY: Excuse me, your Honor. I'm going
6 to interpose an objection here, that he's asking for
7 hearsay. And given that the witness just said -- I
8 understand that this witness has some personal basis,
9 some personal reasons to know about what the bank
10 loaned and where the bank's money went. But the
11 witness just testified that the bank's money wasn't
12 used for this.

13 MR. BRYAN: If I may explain why it truly is
14 pertinent. Your Honor, again, the witness will be
15 able to explain what the plans are for the
16 disposition of the property; and this testimony will
17 facilitate explaining why those plans are realistic
18 and workable.

19 ADMINISTRATIVE LAW JUDGE DOLAN: Well, I have
20 to agree with Mr. Murphy that, based on the testimony
21 I heard from the last question, this is leading to a
22 hearsay answer. So I'm going to have to sustain the

1 objection on that one.

2 MR. BRYAN: All right, your Honor. Thank you.

3 We'll proceed.

4 BY MR. BRYAN:

5 Q Mr. Walsh, when was the last appraisal that
6 was done on the Conservancy property that's in
7 Indymac's possession?

8 A It was completed on October of '06.

9 Q And what, if any, appraisal of the property
10 is being prepared currently?

11 A We have an appraisal that's in process
12 right now, and we expect it will be completed in the
13 next three weeks.

14 Q What's the purpose of obtaining that
15 appraisal now?

16 A The real estate markets have changed
17 significantly; and for purposes of internal
18 reporting, since Neumann is in bankruptcy and we have
19 a secured loan of \$23 million, we want to evaluate
20 our collateral position for purposes of our internal
21 reporting.

22 Q When you say you have a secured loan of

1 \$23 million, why is it that you look at this loan as
2 a \$23 million loan when the full unpaid balance of
3 the credit facility is approximately \$35 million?

4 A 23 million is the portion of our loan that
5 we had allocated to the Conservancy. 35 million is
6 the total.

7 And if I could clarify, the 23 million
8 that we have loaned to Neumann for the Conservancy
9 didn't all go to the on-site or off-site
10 improvements. Some of those came elsewhere.

11 Some of the loan dollars that were
12 advanced to Neumann that were secured by the
13 Conservancy were provided to support the company
14 during its financial struggles.

15 Q I understand. That's the operation of the
16 cross-collateralized?

17 A Exactly. Right.

18 Q Thank you.

19 Now, as vice president at Indymac,
20 what's -- what are your responsibilities in
21 connection with collecting the loan balance today?

22 A One of my primary job responsibilities at

1 Indymac is to manage the Neumann Homes relationship
2 and the Neumann Homes bankruptcy.

3 When the company filed for Chapter 11
4 on October -- in late October, the bankruptcy court
5 with the cooperation of the debtor sort of
6 established a game plan. And the game plan was,
7 initially, to address the started houses in the
8 various subdivisions. And the reason there, the
9 winter was coming and they wanted to minimize the
10 damage to started homes due to exposure to the
11 weather.

12 So during the process, I have been
13 very active in taking back partially started houses
14 in three different subdivisions that we financed.
15 Two of those are here in Illinois and one of those is
16 in Colorado.

17 Still in the process of taking back
18 those started houses, we also have make arrangements
19 for -- first of all, we have to make arrangements to
20 get insurance in place, to hire a contractor to
21 complete the started units. We have to contact all
22 the previous contract purchasers and either ascertain

1 whether they want to go forward with their existing
2 contract.

3 So there's a lot of moving parts in
4 the process of taking back the started units.

5 MR. SHAY: Your Honor, I'm going to object. I
6 mean, we've indulged counsel and this witness to a
7 great extent today, and I understand the lateness of
8 testimony being filed and reasons for it; but -- I
9 don't know how much more we're going to have.

10 But if -- this is putting a lot of
11 unfair burden on the rest of the parties to digest
12 testimony that's wholly new and separate from what
13 was submitted in advance, and we're going to have to
14 digest it all on the fly and conduct
15 cross-examination today immediately after this; and I
16 think it's just a little unfair, and I object to this
17 going much further than it has for that reason.

18 ADMINISTRATIVE LAW JUDGE DOLAN: I assume you
19 agree?

20 MR. MURPHY: Actually, from my point of view,
21 we have tried to put in something that would -- that
22 others have considered additional direct, and the

1 door was slammed on us. And we are working on a
2 tight schedule like everybody else.

3 And my position is either we'll let
4 this go on a while and then we'll talk about what
5 really could have been done to minimize the damages
6 that this bank might incur, or we should cut this off
7 and we won't talk about how much anybody is going to
8 incur here.

9 So I'm good either way.

10 ADMINISTRATIVE LAW JUDGE DOLAN: All right.

11 MR. BRYAN: Your Honor, we're trying get to the
12 two points that I had mentioned earlier on about the
13 harm to the secured lender, but also the prospects
14 for this development being complete which appears to
15 be a significant issue in the expert analyses that
16 have been offered in this proceeding.

17 MR. SHAY: Again, your Honor, I don't know why
18 most of this testimony today couldn't have been filed
19 on January 11th. It looks like -- it's starting to
20 look like counsel just offered the minimal amount on
21 January 11th just to get a foot in the door to offer
22 now very expansive testimony.

1 And, again, we aren't going to have a
2 transcript. The best we can do is to take notes as
3 we go and try to cross based on those. It just
4 doesn't seem fair.

5 ADMINISTRATIVE LAW JUDGE DOLAN: I have to
6 agree, Mr. Bryan. I mean, the proceeding is that
7 normally you file your testimony and then you shore
8 it up. I will give you a little more deference to
9 wrap it up, but I want you to stay close to the base
10 of your testimony that you previously filed.

11 MR. BRYAN: All right. Your Honor, we'll do
12 our best to accomplish that. Can we have the last
13 question back and I don't know if we can get an
14 answer to that and we'll move on to another area.

15 (Whereupon, the record
16 was read as requested.)

17 BY MR. BRYAN:

18 Q Mr. Walsh, if I can focus the discussion
19 now, and specifically, what your plans are for
20 disposing of the Conservancy as collateral property
21 for purpose of satisfying the Neumann Homes debt to
22 Indymac?

1 A Indymac Bank will attempt to take title to
2 the Conservancy, whether it's through a cooperative
3 sale under the auspices of the bankruptcy or 363 sale
4 or whether it's through a foreclosure, we really don't
5 know yet.

6 In any event, we'll take title to the
7 property; and our plan will be to sell it to a
8 developer as soon as we can.

9 Q And what are your expectations and why in
10 respect to Indymac's ability to sell this property
11 either through foreclosures or bankruptcy Code 363
12 sale to a takeover developer?

13 A The property has a lot of attractive
14 features. The property is fully zoned, preliminary
15 platted, utilities have been brought to the site.
16 There's a school in place, substantial infrastructure
17 work on the first pod is complete, two models are in
18 place. So in general, there's a lot of work is done
19 that a new developer could step into and move quickly
20 towards developing the property.

21 Q And what's your personal familiarity with
22 the market of potential takeover developers that you

1 would expect to have some interest in acquiring and
2 completing this development?

3 A I have a lot of familiarity with all of the
4 local home builders and all the national home
5 builders with a presence here in Chicago. And most
6 of those would be candidates for taking over the
7 property.

8 Q I don't -- I wasn't listening carefully
9 enough. Did you say both private and public
10 companies?

11 A Some of the bigger private companies and
12 public companies, yes.

13 Q Okay. And approximately how many private
14 and how many public companies that are capable, in
15 your view, from your experience of absorbing this
16 property?

17 A I believe there are eight public companies
18 who are active in Chicago. Not all the publics are
19 here. Those who are would certainly be capable of
20 taking this property. And there are probably six or
21 seven private companies who would be capable of take
22 over this property.

1 Q Switch subjects now quickly, and I think
2 will help us wrap it up. What is your understanding
3 of the proposed -- the route proposed by the Village
4 of Huntley for the installation of ComEd transmission
5 lines along what has been called the modified
6 Freeman/Galligan route?

7 A Well, my understanding is that would
8 encroach on many of the lots that are along Galligan
9 Road, and that would cut across a substantial portion
10 of the properties identified as neighborhoods. I
11 believe neighborhoods three and four. The two that
12 are adjacent to the southern perimeter of the
13 property.

14 Q And what basis do you have personally for
15 evaluating or estimating the economic effect of the
16 proposed modified Freeman/Galligan route on the value
17 of the Conservancy as collateral property securing
18 payment of the Indymac loan?

19 A Well, I've spoken to an appraiser regarding
20 the impact of power lines being adjacent to lots. He
21 gave me an estimate of a 25 percent decrease in value
22 for lots that will be adjacent to a power line.

1 But in addition to that, based on my
2 understanding where that power line is going to go,
3 we might lose lots outright. We might have lots that
4 are in the plan that wouldn't be able to be
5 developed. So those would be a total loss.

6 Q So what -- based on the most recent
7 appraisal and information that you gathered in the
8 process of performing your job responsibilities, what
9 range of values do you see the Conservancy property
10 today undeveloped but under construction having that
11 could be effected?

12 A I think that personally on my analysis and
13 talking to my appraiser, I think it's 2 to
14 \$5 million.

15 Q And 2 to \$5 million would represent what?

16 A It would be a decline in value to the
17 Conservancy due to the power lines.

18 Q And what would that mean in terms of
19 satisfying the Neumann Homes obligation to Indymac?

20 A That would certainly weaken our position.

21 Q So what potential do you see for Indymac
22 potentially being undersecured and unable to satisfy

1 its obligation if the modified Freeman/Galligan route
2 is approved and implemented?

3 A There's a good chance that not only we'd be
4 undersecured, but also the delay that this would
5 cause. It would take us longer to develop and longer
6 to market the property. And so that would compound
7 our problem.

8 Q Notwithstanding the delay and the
9 difficulty, you're confident that the property would
10 still be salable to take over developer for
11 completion?

12 A Yes.

13 MR. BRYAN: Thank you, Judge. That's all I
14 have, subject to redirect.

15 ADMINISTRATIVE LAW JUDGE DOLAN: Thank you.

16 Ms. Licup.

17 MS. LICUP: Just a couple of questions.

18 CROSS-EXAMINATION

19 BY

20 MS. LICUP:

21 Q Mr. Walsh, is it correct that Indymac has
22 filed a claim in the bankruptcy of Neumann Homes?

1 A Yes.

2 Q Is that proceeding in the Northern District
3 of Illinois?

4 A I believe so, yes.

5 Q To the best of your knowledge, does Neumann
6 Homes have any legal rights to the property
7 currently?

8 A Neumann Homes is still in title.

9 Q Okay. Is it your understanding that the
10 future of the property is dependent on the bankruptcy
11 court outcome in this case?

12 A In the long run, no. In the short run,
13 timing-wise, yes.

14 MS. LICUP: No further questions.

15 ADMINISTRATIVE LAW JUDGE DOLAN: Thank you.

16 Mr. Robertson? No? Thank you.

17 Mr. Murphy?

18 MR. MURPHY: Let me look.

19 CROSS-EXAMINATION

20 BY

21 MR. MURPHY:

22 Q Your counsel earlier today indicated that

1 you only recently became aware of this docket. How
2 did Indymac become aware of this docket?

3 A We became aware of the docket through our
4 attorneys, through our law firm.

5 Q And do you know how they became aware of
6 the docket?

7 MR. BRYAN: I would ask to caution the witness
8 to reframe from disclosing any privileged
9 attorney/client communications. But sorry to
10 interrupt. We haven't had that discussion.

11 MR. MURPHY: That's fine.

12 BY MR. MURPHY:

13 Q Are you aware of how your attorneys became
14 aware of the docket?

15 A No, I'm not.

16 Q Do you know where Madison County, Illinois
17 is?

18 A No, I do not.

19 Q Are your attorneys in Chicago?

20 A Yes, sir.

21 Q When you filed your testimony here, there
22 was a proof of service from your attorneys in Chicago

1 that indicates that they signed it in the County of
2 Madison.

3 Would you agree with me, subject to
4 check, that that's where Robertson, who represents
5 Gilberts, is from?

6 A Can you repeat that, please.

7 Q Yeah.

8 Would it refresh your recollection if
9 I told you Madison County is near St. Louis?

10 A I don't know where Madison County is.

11 Q Never mind. I'll move on.

12 But other than your attorneys calling
13 you and telling you this is going on, you don't have
14 any other -- you don't know how you found out about
15 it?

16 A That is how I found out about it.

17 Q Okay. I heard you had a number of degrees
18 I'm interested in them. You have BA in economics and
19 you have MBA in Michigan.

20 Have you done any study of land
21 planning?

22 A No, sir.

1 Q But you actually have been in commercial
2 real estates for 15 years?

3 A Yes, sir.

4 Q And you've actually been a home builder
5 finance for nine years; is that correct?

6 A Yes.

7 Q And as part of your experience in
8 commercial real estate and home finance, is part of
9 your job to evaluate potential plans for
10 developments?

11 A Can you explain what you mean by
12 "evaluate."

13 Q Sure.

14 If a developer wants to come to
15 Indymac and borrow money to build a development, do
16 you ask to see the plans?

17 A Yes, sir.

18 Q Do you reach any judgment at all about
19 the -- about whether the plans are viable?

20 A Yes, sir.

21 Q And that's part of your job description?

22 A We engage third-party engineers.

1 Q And do you, yourself, review them at any
2 level?

3 A No, not in my current job as a manager.

4 Q But in your history as a home -- excuse me.
5 History in commercial real estate home building
6 finance, has that been part of your job?

7 A Yes. We call it cost review, as a review
8 of the plans engineering and as it relates to a
9 proposed budget.

10 Q And you indicated you followed the
11 bankruptcy. Is this a Chapter 11 or a Chapter 7?

12 A It's a Chapter 11.

13 Q What does that mean?

14 A It means that the parties intend to
15 reorganize and the company intends to come out of
16 bankruptcy after its debts are settled and reorganize
17 and go forward.

18 Q And, in fact -- well, I'm going to show you
19 and your counsel -- well, I'll get my copy of it.

20 I'm going to show you what's been
21 marked as Huntley Cross Exhibit 7. Go ahead and read
22 it, and tell me when you've looked at it, please.

1 A Okay. I've reviewed it.

2 Q And Ms. Licup asked you some questions
3 about how this is going to turn on the bankruptcy
4 proceeding. Is it possible that Neumann Homes may
5 emerge from this bankruptcy as the continued owner of
6 the area called the Conservancy?

7 A I think that's very unlikely.

8 Q Is that one of the procedural
9 possibilities?

10 A I would say, no.

11 Q So if Neumann Homes says down here in
12 sub- -- if Neumann Homes says down here in Sub A that
13 it is currently proceeding as an orderly liquidation,
14 although a reorganization is potentially possible,
15 you simply disagree with Neumann Homes?

16 MR. BRYAN: Objection. I think the question
17 may be a little bit misleading. I think the witness
18 is hearing the question in respect to the
19 Conservancy, but the question really covers all of
20 Neumann Home operations.

21 BY MR. MURPHY:

22 Q Okay. So if Neumann Homes believes that it

1 can come out of its bankruptcy as a reorganization,
2 you don't think that's possible?

3 A I think that might be possible. As it
4 relates to the Conservancy, due to the scope of the
5 debt on the Conservancy and due to the size of the
6 Conservancy, I don't believe it's possible that they
7 are going to come out of this with the Conservancy.
8 That's my point.

9 Q And have you had any conversations with
10 Neumann Homes about what their expectations are?

11 A Regarding?

12 Q Regarding the possibility that they can
13 bring the Conservancy out with them?

14 A I have not had that conversation, no.

15 Q In your rebuttal testimony, you indicated
16 all the parties saw until today was that you had a --
17 that Indymac hold a first mortgage of 100 million
18 securing a loan to Neumann Homes. But just so I
19 understand, that hundred million is not all currently
20 at risk?

21 A That's correct.

22 Q In fact, only 35 million of it is

1 outstanding?

2 A Yes, sir.

3 Q And of that, only 23 million is actually
4 related to the Conservancy?

5 A I would say that 23 million is allocated to
6 the Conservancy. But under our legal structure, we
7 could collect up to the full amount of our debt
8 through the sale of the Conservancy.

9 Q So due to cross-collateralization, you
10 might use it for 35 million but -- well, let me ask
11 you a different question.

12 You said that you've had it
13 appraised -- it was appraised in '06 and it's being
14 appraised now. Did you tell us what the appraisal
15 value was in '06?

16 A I don't think I told you, no.

17 Q Do you know what the appraisal value was in
18 '06?

19 A Yes, sir.

20 Q What was it?

21 A It was about 30 million.

22 Q And it is not -- the Conservancy is not the

1 only property that's securing that \$35 million
2 current loan?

3 A That's correct.

4 Q What is the total value, to the best of
5 your knowledge, of all of the assets that secure that
6 loan?

7 A We believe it's about 50 million.

8 Q So currently, you are oversecured to the
9 tune of about 15 million?

10 A In theory.

11 Q You also indicated -- there's some
12 testimony that you had about housing starts. Is it
13 your opinion that housing starts are down?

14 A Yes, sir.

15 Q And how long has that trend about housing
16 starts going down, how long has that been apparent to
17 you?

18 A A year and a half, almost two years.

19 Q And would you expect housing starts -- as
20 you sit here today, would you expect housing starts
21 in 2008 to be as high as they were in 2007?

22 A No.

1 Q 2009, do you have a view about whether
2 those will be up or down?

3 A 2009 we think will be coming back.

4 Q Do you have a -- currently, as you sit
5 here, do you have an expectation as to whether 2009
6 will be as high as 2007?

7 A I would say probably on par.

8 Q When you were talking about allocating the
9 23 million of your value to the Conservancy, you
10 indicated that you had not yet distributed that much
11 money for actual expenditures in the Conservancy; was
12 that your testimony?

13 A That's correct. We loaned Neumann up to
14 \$23 million secured by the Conservancy, but all those
15 dollars didn't necessarily go to the Conservancy.

16 Q Do you know how many of those dollars went
17 to the Conservancy?

18 A Well, certainly the 12 million and cost
19 basis of the land was financed by Indymac, yes.

20 Q Beyond that, can you identify anything that
21 was loaned as allocated to the Conservancy that
22 actually was spent at the Conservancy?

1 A Just the original \$12 million in land.

2 Q Thank you.

3 Now, if you dispose -- you talked

4 about taking title to the property, and you indicated

5 that you -- that your focus was on properties where

6 the houses started; right?

7 A Yes, sir.

8 Q So you were talking about places where

9 somebody was actually -- had laid a foundation and

10 started to build a shell. Is that what you mean?

11 A Somebody at Neumann. Neumann is the home

12 builder. So these are all built by Neumann.

13 Q Okay. And are any of those at the

14 Conservancy?

15 A No.

16 Q To the best of your knowledge, are any

17 houses currently under construction at the

18 Conservancy?

19 A Well, there are two finished models in the

20 Conservancy, and there are two foundations. I would

21 call it a start.

22 Q And did those foundations attract enough

1 attention for you to get them finished as a priority
2 matter?

3 A It was decided -- we had two finished
4 houses that were completely finished and two
5 foundations that weren't at risk. It's a concrete
6 foundation. So they were simply winterized and that
7 was -- there was no attempt to finish. It was only
8 5 percent complete, so. . .

9 Q Now, if, as you described it, you take
10 title, there are one of two ways that could happen.
11 And I'm going to characterize them and I'm going to
12 butcher them and please correct me.

13 Under one of those circumstances,
14 Neumann would actually sell you the Conservancy
15 presumably in exchange for a reduction of its debt?

16 A Yes, sir. Right.

17 Q And the other one, you would have to
18 foreclose on it?

19 A Yes.

20 Q And is the foreclosure done through the
21 bankruptcy process?

22 A I'm not sure. I'm not sure exactly how

1 it's going to go. I'm not sure that anybody knows
2 yet.

3 Q Is there a calendar in place for that to
4 happen?

5 A Not exactly.

6 Q Is there a calendar in place for Neumann
7 Homes to sell you the property voluntarily?

8 A We've had discussions about a 120-day
9 window. That's not finalized.

10 Q So that 120-day window is someplace in the
11 future or someplace in the past?

12 A 120 days in the future has been discussed
13 as a date sure delivery of the property to the
14 lender, to the bank.

15 Q But there's no agreement on that?

16 A That's right.

17 Q Would you have any expectation that anybody
18 is going to take any further action in the
19 Conservancy before the title is settled with one
20 developer or another?

21 A It's possible that the municipality will
22 attempt to lift the stay and exercise the surety bond

1 to complete the site work that's been started in pod
2 four. And that's the only -- that's what I see as
3 the next possibility.

4 Q Has the municipality, have they intervened
5 in the bankruptcy?

6 A I don't know.

7 Q Other than the city pushing its bonds in
8 the bankruptcy, would you expect any developer to
9 continue work here before title to the land is
10 settled?

11 A No, I would not.

12 Q You also indicated you've spoken with an
13 appraiser who tells you that having a power line
14 adjacent to a property is a 25 percent decrease in
15 value; is that -- that was your testimony?

16 A Yes.

17 Q And you also testified about losing lots
18 outright. Do you have -- you analyzed how many lots
19 you would lose outright if the current Conservancy
20 plans were kept and the modified Galligan/Freeman
21 route was put there?

22 A By analyze, I'm just looking at a map and

1 kind of doing a finger count; but I think it was 40
2 or 50 lots.

3 Q 40 to 50 lots?

4 A Yeah.

5 Q What percentage of your 2 to \$5 million
6 would that 40 to 50 lots --

7 A Well, it would be about a million and a
8 half dollars.

9 Q Of the -- so of the two, it would be about
10 a million and a half?

11 A Uh-huh. I'd say a million and a half
12 dollars if we lose 50 lots.

13 Q And what's the range of the two to five?
14 What pushes it from two to five?

15 A Well, I think in addition to the million
16 and a half that I'll lose by losing lots, I'll
17 probably have another 60 lots that will be adjacent
18 to the power lines.

19 And if I lose 25 percent of the value
20 of those, 60 times 30,000 times 25 percent is, I
21 don't know, \$500,000, maybe \$600,000. And that's
22 just the pure mathematical loss of lots or lot

1 salability due to the proximity of the power lines.

2 Q And what do you consider proximately in
3 order to induce the 4 to 5 percent loss of value?

4 A I would say adjacent, meaning homes
5 bordering the easement.

6 Q The right of way?

7 A Right.

8 Can I finish your first question?

9 Q Sure.

10 A That kind of gets me to \$2 million. Where
11 I say 2 to \$5 million, in my view, the big loss is
12 that a developer who's going to come in and take this
13 property may not know -- he may need to reconfigure,
14 the reconfiguration of streets and lots due to the
15 loss of lots.

16 I don't know. That could be costly.
17 Sometimes a developer's -- are biggest enemy is fear,
18 and a developer speculating on what might it cost,
19 it's just going to hurt our value.

20 Q But the actual direct cost of the line is
21 your \$2 million number?

22 A Yes.

1 Q And of that 1.5 is loss of lots?

2 A Yes.

3 Q I may need you to step over here,

4 Mr. Walsh, because I may have to have you read some

5 things on this chart. And I actually have copies of

6 these charts, Plan A, that I'll handout so people can

7 look at them while we're doing this.

8 Mr. Walsh, do you recognize Gilberts

9 Exhibit 2.2. Do you know what this is?

10 A Yes. I've seen it before.

11 Q Do you understand it to be the current site

12 plan for the Conservancy?

13 A Yes.

14 Q And you testified about having seen

15 something having to do with infrastructure. Is it

16 your understanding that the teal part of this map is

17 where the infrastructure is currently located?

18 A Yes.

19 Q And did you hear Mr. Tomaso's testimony

20 about this this morning?

21 A Yes.

22 Q Do you disagree with him?

1 A I don't disagree.

2 Q Okay. Now, when you said that you were
3 going to impact lots, you initially mentioned some
4 lots on Galligan Road. So that would be these, one,
5 two, three, four, five, six, seven, eight, nine,
6 lots; right?

7 A Right.

8 Q And due to the routing of modified
9 Freeman/Galligan, it would not impact any of the lots
10 down here; correct?

11 A Correct.

12 Q In fact, the original Galligan/Freeman
13 would have impacted all of those lots; wouldn't it?

14 A Yes.

15 Q And so when you were counting -- you said
16 40 lots?

17 A 40, right.

18 Q You were basically finger counting here?

19 A Uh-huh.

20 Q And what range -- I mean, how far off the
21 line did you count lots to arrive at 40, if you can
22 describe that?

1 A Well, I sort of drew a line and I said one,
2 two, three, four, five, six, seven -- it's 30. But
3 these are kind of crowded here.

4 Q And when you say lose, is it your
5 understanding that the right of way would necessarily
6 take out these lots?

7 And I guess I want to understand the
8 difference between lose and impact. So when you say
9 40 lots lost, are you saying 40 lots impacted or 40
10 lots that simply can't be built?

11 A 40 lots that can't be built.

12 Q So if the line were -- if the line were
13 moved slightly, ever so slightly north and if the
14 right of way did not include these properties, those
15 wouldn't be lost. They would be impacted but not
16 lost?

17 A Presumably. Right.

18 Q Okay. I want you to focus now on the
19 Conservancy and it's referred to as concept Plan A.
20 And I'm just simply going to represent to you that
21 the Village of Huntley had some developers look at
22 ways to deal with this.

1 If you follow me, it's the same line,
2 it's the same route that you'll see that there is a
3 dotted line with a right of way route; do you see
4 that?

5 A Yes, sir.

6 MR. ROBERTSON: I'm going to object. There is
7 no foundation for this exhibit. We don't know who
8 the engineers were. We don't know what their
9 qualifications were, and this is the same exhibit
10 that we dealt with earlier.

11 There's no foundation laid for the
12 validity of what's shown on here or the competency of
13 the people who prepared it. Absolutely not.

14 MR. MURPHY: For the record, it was Gary Weber
15 and Associates. It's indicate down here. But let me
16 do a little more foundation just to be clear.

17 BY MR. MURPHY:

18 Q Mr. Walsh, could you step back around in
19 front.

20 A Okay.

21 Q Can you compare -- and, really, take as
22 long as you think is necessary. Can you compare

1 Gilberts Exhibit 2.2 to concept Plan A and let me
2 know whether you agree that but for this pod four
3 area, they are -- they indicate an identical plan for
4 the Conservancy.

5 A I'm not counting lots on this. The
6 commercial site is cut off on this one. This
7 commercial and some sort of multi-family here.

8 Q Right. Because this doesn't actually
9 extend to the very north end. And I'd also point
10 out, this doesn't extend to the very west either.

11 A Okay. Right. But it looks like the same.

12 Q And I will represent to you and I will
13 represent for the record that the task that was given
14 to Gary Weber and Associates, as Mr. Tomaso indicated
15 earlier, is the same group who redesigned routes for
16 Huntley, because of Phase 1 and Phase 2, was given
17 the task to deal only with pod four.

18 MR. ROBERTSON: Your Honor, this exhibit is
19 based on facts that are not in evidence. Nobody has
20 presented this plan, whatever this is, A or B, or any
21 other plan.

22 And counsel's representation are fine

1 but they're not evidence, and they should have
2 presented whatever engineer that they wanted as part
3 of their direct case or their rebuttal case to
4 present these concepts.

5 I think where we're headed is now
6 they're proposing a third route. Okay? We don't
7 what that is or what the basis for it is because they
8 haven't been able to present a witness to support
9 this. It was done this weekend.

10 So because it assumes facts that are
11 not in evidence and because there's nobody here to
12 validate what's purportedly shown on here, other than
13 the fact that the plans appear to be the same, there
14 are other lines and whatever concept Plan A is, it's
15 just not in evidence.

16 And, therefore, there's no basis for
17 asking a witness a hypothetical question on the basis
18 of facts that are not in evidence. There is no
19 concept Plan A in evidence.

20 MR. MURPHY: Your Honor, a few things, first of
21 all, anybody in this room, certainly this witness,
22 can -- and I would literally give him as long as he

1 wanted -- can go through -- and just to broaden this
2 and know what we're talking about, concept Plans A,
3 B, and C -- anybody can go and compare that they are
4 identical in the layout but for that pod one, two.

5 This witness has said, as part of his
6 commercial development, he's looked at plans before.
7 So he's generally familiar with what these things
8 are.

9 Three, this is not a new route. I
10 think the testimony from both the ComEd witnesses and
11 Mr. Robinson is you plan a route, the engineers put
12 in the alignment. All these are different alignments
13 of that same route.

14 And the big important -- the important
15 fact here is this witness says that his client -- or
16 his company is going to be impacted greatly because
17 of loss of lots. That's his testimony. Because of
18 loss of lots.

19 And he has apparently assumed that all
20 these lots must be lost. And I am prepared to show
21 him three different plans, two of which maintain the
22 number of lots. One of them actually adds one, I

1 think.

2 But anyway, the other one has minimal
3 lot loss. So this is directly responsive as
4 cross-examination to the direct examination he has
5 given.

6 The last thing I'd say about whether
7 the engineers are engineers, I mean, he says he has
8 an appraiser. I don't know who the appraiser is. I
9 take him at his word. But what is needed for him to
10 do to answer the questions I'm going to ask him is
11 all in front of him and available to anybody in this
12 room to look at in recross or redirect.

13 MR. ROBERTSON: Your Honor, Mr. Murphy's
14 witness, I heard him testify this afternoon, said he
15 was not recommending any alignment in this case.
16 Therefore, there are no facts in this case to support
17 any suggestion of any alignment for this line within
18 the route or on the route or whether it's a different
19 route proposed by the Village of Huntley.

20 So I still believe that had the
21 witness testified that he was recommending an
22 alignment, then maybe there might have been some

1 factual basis in the record for approaching in the
2 manner counsel is trying to do. So I don't have
3 anything else to say.

4 MR. MURPHY: I have one other point. And I
5 only put it out here because I want to have this
6 conversation and move on.

7 When the Village of Gilberts witness
8 comes on, I will ask him and establish that even
9 though we ask them for the infrastructure plans for
10 this on December the 4th, we got those plans on
11 January the 10th, the day before we filed our
12 rebuttal testimony. That's why these plans have not
13 been circulated earlier.

14 December 14th, excuse me.

15 MR. ROBERTSON: This plan was attached to our
16 rebuttal testimony.

17 MR. MURPHY: Filed on January the 11th.

18 MR. ROBERTSON: Correct.

19 MR. MURPHY: Same day as our rebuttal
20 testimony.

21 MR. ROBERTSON: Well, then it's inadmissible
22 surrebuttal testimony.

1 MR. MURPHY: If it's helpful to anybody, I have
2 copies.

3 ADMINISTRATIVE LAW JUDGE DOLAN: This is --
4 obviously, this is the same document that I rejected
5 earlier.

6 MR. MURPHY: Yes, your Honor, it is.

7 ADMINISTRATIVE LAW JUDGE DOLAN: And I still
8 don't think that there's been a proper foundation
9 laid for the document itself.

10 I mean, I understand what you're
11 trying to ask him about the lot sizes and the changes
12 and everything, but there still has not been an
13 establishment of a proper foundation for the document
14 itself.

15 I mean, you can ask him with other
16 charts, but I don't think I'm going to allow you to
17 proceed with this chart.

18 MR. MURPHY: So he can testify he'll lose lots
19 and I cannot question him on ways that he can avoid
20 losing lots?

21 ADMINISTRATIVE LAW JUDGE DOLAN: I did not say
22 that. I'm just saying that you can't use that chart

1 to do that.

2 MR. MURPHY: I understand, your Honor.

3 ADMINISTRATIVE LAW JUDGE DOLAN: I think we're
4 all hitting a wall right now, too.

5 MR. MURPHY: I guess at the very least, I'd
6 like to make an offer of proof of these three charts
7 just to maintain the record that I have offered them
8 into evidence; and if it's appropriate, to mark them
9 as cross-examination exhibits. I just want to
10 preserve my record here.

11 And I'll take care of that at whenever
12 the next break is and we'll make that offer.

13 BY MR. MURPHY:

14 Q But I think, Mr. Walsh, you can sit down.

15 Mr. Walsh.

16 A Mr. Murphy.

17 Q Just to link up to the testimony we were
18 talking about earlier, you indicated that the loss of
19 lots of the direct cost loss of lots was
20 three-quarters of the direct cost, as I recall;
21 correct?

22 A Yes.

1 Q Is it your understanding that developers
2 sometimes rearrange their developments over the
3 course of the life of the development?

4 A Yes.

5 Q Is that commonplace?

6 A Certainly not common in terms of more than
7 half the time. I would say substantially less than
8 half the time.

9 Q But it happens with some frequency?

10 A It happens from time to time.

11 Q And, in fact, if you get a developer other
12 than Huntley -- I'm sorry, other than Neumann Homes,
13 they're not going to be bound by this Conservancy
14 plan; are they?

15 A They wouldn't be bound by it.

16 Q And I understand that some part of this has
17 been platted. I think you indicated that; didn't
18 you?

19 A Well, it's -- preliminary plat approval is
20 in place for the whole thing. The final plat is in
21 place with 100 lots that are in development.

22 Q Okay. And with regard to the preliminary

1 platting, in your experience, does it sometimes occur
2 that a developer will go back to the municipality and
3 chart it out and work out a new platting or new
4 arrangement?

5 A They might if there's a reason to.

6 Q And would the -- would a Commission order
7 directing a transmission line across their
8 development be a reason to go back and change some
9 arrangements to avoid losing lots?

10 A It's possible.

11 Q Is there any reason that you're aware of
12 that Neumann or whatever developer might end up with
13 this property could not make an attempt to rearrange
14 the development in a way that would maintain the same
15 current lot count?

16 A I'm sorry, can you just repeat the -- I
17 want to understand your question.

18 Q I want to understand my question too.

19 MR. MURPHY: Could you read it back.

20 (Whereupon, the record
21 was read as requested.)

22 THE WITNESS: Well, it's costly to rearrange

1 lots, and it involves engineers. You have to go
2 before the city. There are hearings. The entire
3 appeal of the subdivision as it currently sits is
4 that that's all done. Nobody likes to go before the
5 town and nobody likes to spend money on engineers,
6 and that's -- so that cost could be a prohibiting
7 factor.

8 BY MR. MURPHY:

9 Q And all of those costs of planning
10 developments actually occur wherever there is a
11 transmission line; do they not?

12 A Yes.

13 Q So -- I'm putting up ComEd's Exhibit 12.
14 If you were planning developments along this line,
15 all those costs you described are going to be
16 incurred by those developers; are they not? Having
17 to arrange around the transmission line.

18 A Mr. Murphy, I have no idea. I have not
19 studied that route.

20 Q Okay. And if I represent to you there are
21 35 current households that are adjacent to the
22 transmission line here, that 25 percent lot value

1 impact, is that going to hit them?

2 A I don't know. It might.

3 Q Well, your appraiser -- that's a number

4 you're relying on with regard to the lots that our

5 transmission line goes by; is that correct?

6 A Sure.

7 Q Are you aware of any reason it wouldn't

8 equally apply here?

9 A I'm not aware of any reason it wouldn't

10 equally apply, no. And I don't have any specific

11 knowledge of those lots.

12 Q Okay. And Indymac Bank -- I mean, you

13 understand that when you're dealing with a developer,

14 there's a certain amount of risk; right?

15 A Uh-huh.

16 Q And is that same risk true with each of

17 these 35 families who built their houses? Do they

18 get any money -- never mind.

19 Is that same risk true? I mean, do

20 they have a development risk when they buy a house?

21 A No. I mean in terms of a development risk

22 being the risk that things are going to change or

1 construction is going to go badly or they're going
2 to -- what I call development risk are the risks
3 associated with site development or things in the
4 ground, you don't expect that type of thing. So when
5 you're buy an existing house, I don't think you face
6 that same risk.

7 Q For Indymac, if the development goes well,
8 you guys will actually make money on the project, I
9 assume? There is a reward for your risk; is there
10 not?

11 A We'll get our loan back. That's the best
12 we can do.

13 Q With interest?

14 A Yes.

15 MR. MURPHY: I have no further questions.
16 Thank you.

17 ADMINISTRATIVE LAW JUDGE DOLAN: Thank you.

18 Mr. Shay.

19 CROSS-EXAMINATION

20 BY

21 MR. SHAY:

22 Q Mr. Walsh, how large is Indymac Bank?

1 A The company is approximately \$15 billion in
2 assets.

3 Q \$15 billion in assets?

4 A Yes, sir.

5 Q Okay. Would you agree with respect to the
6 impact on this development, the Conservancy, that
7 it's better to know about this transmission line
8 project possibly going along the modified
9 Freeman/Galligan route now than it would be to know
10 that after this development was further along, just
11 relatively speaking?

12 A Sure. I'd like to know whatever is going
13 to happen sooner than later.

14 Q Okay.

15 MR. SHAY: One moment, your Honor.

16 ADMINISTRATIVE LAW JUDGE DOLAN: Uh-huh.

17 MR. SHAY: That's all.

18 ADMINISTRATIVE LAW JUDGE DOLAN: Thank you.

19 Mr. Lascari?

20 MR. LASCARI: Your Honor, I don't think I have
21 any questions for this witness.

22 ADMINISTRATIVE LAW JUDGE DOLAN: Okay. Thank

1 you.

2 Any redirect, Mr. Bryan?

3 MR. BRYAN: One or two questions. Thank you,
4 your Honor.

5 REDIRECT EXAMINATION

6 BY

7 MR. BRYAN:

8 Q Mr. Walsh, when you estimated that the
9 current total obligation of Neumann Homes is
10 approximately 35 million, does that include principal
11 and interest?

12 A It's just principal.

13 Q So is there an interest factor that at
14 least today Indymac Bank is assuming that it would
15 not be able to recover?

16 A No, we'll attempt to recover our interest.

17 Q So there is -- so the 35 million is not the
18 total obligation?

19 A That's right.

20 Q And do you know today approximately what
21 the interest in addition is?

22 A I could guess. I'd say it's about a

1 million, which would be my rough guess. \$30 million
2 times a quarter of the year times 10 percent. That's
3 areally rough number, but that's -- it's on
4 non-accrual. So I don't see it every day. I don't
5 see the interest accruing. We are able to collect
6 it.

7 Q So from what you just said, it sounds like
8 interest would accrue on 35 million. About 4 million
9 a year?

10 A A little less than that.

11 Q So depending on the timing of the eventual
12 sale of the Conservancy and foreclosure or a
13 bankruptcy Code 363 sale, if it took as long as a
14 year for that to happen, the balance would be closer
15 to 40 million in reality?

16 A Yes.

17 Q And when you estimated that the total
18 collateral value on all cross-collateralized property
19 could be somewhere in the vicinity of 40 to 50
20 million, are there other contingencies in the
21 dispositions of properties other than the Conservancy
22 that could effect that collateral disposition value?

1 A Oh, yes. I have four other properties that
2 were in various stages of taking back homes, trying
3 to build homes, sell homes. We have another lot
4 position on the well land position. So we really
5 don't know what we're going to get for any of those
6 liquidations.

7 Q So today, given the factors that we've just
8 now talked about, the prospect of coming out whole
9 really is not clear at all?

10 A It's not clear, right.

11 Q And the decision regarding the ComEd
12 transmission line on this property could effect that
13 balance?

14 A Yes.

15 MR. BRYAN: Thank you.

16 ADMINISTRATIVE LAW JUDGE DOLAN: Thank you.

17 Anyone else?

18 MR. MURPHY: No.

19 ADMINISTRATIVE LAW JUDGE DOLAN: All right.

20 Thank you, Mr. Walsh.

21 I'm showing ten to 1:00. How about we
22 come back at 1:45.

1 (Whereupon, further proceedings
2 in the above-entitled matter
3 was continued to January 30,
4 2008, at 1:45 p.m.)
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1 AFTERNOON SESSION

2 THE COURT: Okay. Back the on the record.

3 Mr. Murphy?

4 MR. MURPHY: Your Honor, pursuant to the
5 discussion and examination we had of Mr. Walsh, I was
6 discussing with him three plans which I identified, I
7 believe, only as the Conservancy Concept Plans A, B,
8 and C.

9 In order to make a complete record, I
10 have marked those as Huntley Cross-Exhibit 10, being
11 the Conservancy Concept Plan A. Huntley
12 Cross-Exhibit 11, being the Conservancy Concept Plan
13 B. And Huntley -- I'm sorry -- Conservancy Concept
14 Plan C, being marked as Huntley Cross-Exhibit 12.

15 And I would hereby move to admit those
16 as evidence in this case -- or let me actually say
17 move to admit those as cross-examination exhibits.

18 THE COURT: Okay. Is there any objections?

19 MR. ROBERTSON: Same objection we had before,
20 your Honor. I'm not objecting to his offer of proof,
21 just the admission into evidence of the exhibits.

22 MR. MURPHY: And, by the same token, by

1 argument is in support of same ones I made to you
2 before.

3 THE COURT: Does anyone else have any opinions
4 on it?

5 (No response.)

6 THE COURT: No? Okay.

7 Again, I'm going to stand by my
8 rulings of earlier and I will mark them as rejected
9 exhibits, but I will make them part of the record.

10 MR. MURPHY: Thank you, Judge.

11 MR. LASCARI: Your Honor, before the break --
12 and I know Mr. Bryan is not here -- but there was
13 some question as to whether IndyMac Exhibit 1.0 had
14 been admitted into evidence.

15 Do you want to wait until he returns
16 to address that situation? That hasn't been
17 determined over the break.

18 JUDGE DOLAN: Yeah, I checked my notes and,
19 yeah --

20 Mr. Bryan, we were just talking about
21 you. So I don't think that exhibit was admitted into
22 the record.

1 MR. BRYAN: I would renew our request, then.

2 JUDGE DOLAN: Okay. Is there any objection to

3 IndyMac Exhibit 1?

4 MR. MURPHY: The objections I made before still

5 persists.

6 JUDGE DOLAN: Okay. And, subject to that, we

7 will admit IndyMac Exhibit 1.0 for the record.

8 (Whereupon, IndyMac Exhibit

9 No. 1.0 was admitted into

10 evidence.)

11 MR. BRYAN: Thank you, Judge.

12 THE COURT: All right. So we are on to

13 Mr. Keller on behalf of Gilberts; is that correct?

14 MR. ROBERTSON: I believe so, your Honor.

15 JUDGE DOLAN: Would you please identify the

16 witness for the record.

17 MR. ROBERTSON: The Village of Gilberts calls

18 Mr. Ray Keller.

19 JUDGE DOLAN: Mr. Keller, please raise your

20 right hand.

21

22

1 (Witness sworn.)

2 JUDGE DOLAN: Okay. Proceed, Counsel.

3 RAYMOND B. KELLER

4 called as a witness herein, having been first duly
5 sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY

8 MR. ROBERTSON:

9 Q Mr. Keller, I show you the document that
10 purports to be the direct testimony of Raymond B.
11 Keller on behalf of the Village of Gilberts, dated
12 November 2, 2007 consisting of six pages of questions
13 and answers.

14 Are you familiar with that document?

15 A Yes, I am.

16 Q And was the document prepared under your
17 supervision and at your direction?

18 A It was.

19 Q And if I were to ask you the questions
20 contained therein today, would your answers be the
21 same as contained therein?

22 A Yes.

1 Q Now, I also show you a document entitled
2 Rebuttal Testimony of Raymond B. Keller on behalf of
3 the Village of Gilberts, Village of Gilberts
4 Exhibit 2.0. And that document consists of four
5 pages of questions and answers. And Exhibits 2.1 and
6 2.2.

7 Are you familiar with that document?

8 A I am.

9 Q Was that document prepared under your
10 supervision and at your direction?

11 A Yes.

12 Q And if I were to ask you the same questions
13 as are contained therein, would your answers be the
14 same as contained therein?

15 A Yes.

16 MR. ROBERTSON: Your Honor, I don't know that I
17 identified the first document as Gilberts
18 Exhibit 1.0; that's the direct testimony. Just in
19 case I didn't, that's what it is.

20 With regard to Gilberts Exhibit 1.0,
21 the direct testimony of Raymond B. Keller, that was
22 filed on e-docket on November 2, 2007, Tracking No.

1 85710.

2 Mr. Keller's rebuttal testimony,
3 Gilberts Exhibit 2.0, was filed on January 11th,
4 2008. That tracking number being 88172.

5 And, with that, I would move for the
6 admission of Gilberts Exhibit 1.0 and 2.0 and offer
7 the witness for cross-examination.

8 JUDGE DOLAN: Any objections?

9 MR. LICUP: No.

10 MR. HARVEY: None from Staff.

11 MR. LASCARI: No, your Honor.

12 MR. BRYAN: No.

13 JUDGE DOLAN: All right. Then Gilberts
14 Exhibit 1.0 will be admitted into the record; and
15 Gilberts rebuttal testimony, Exhibit 2.0, along with
16 attachments, Exhibits 2.1 and 2.2, will be admitted
17 into the record.

18 (Whereupon, Gilberts Exhibit
19 Nos. 1.0, 2.0, 2.1, 2.2 was
20 admitted into evidence.)

21 THE COURT: Do you want to go first Ms. Licup?

22

1 CROSS-EXAMINATION

2 BY

3 MS. LICUP:

4 Q Mr. Keller, my name is Katie Licup. I'm an
5 attorney for Commonwealth Edison. Is it correct that
6 Exhibit 2.2 is a map or a chart of the infrastructure
7 of the conservancy?

8 A It is an exhibit showing the extent to
9 which infrastructure has been extended into the
10 development, yes.

11 Q And we have placed an enlarged version of
12 Exhibit 2.2 on the easel here.

13 Is that a true and accurate copy of
14 Exhibit 2.2 that has been admitted into the record?

15 A It is.

16 Q What is the status, from a platting
17 perspective, of the Neumann Homes Conservancy
18 Development?

19 A The development has a secured preliminary
20 plat plan approval, which lays out the lot layout for
21 the master plan in its entirety. The area that's
22 highlighted in teal, I believe it's a 120 odd lots.

1 Highlighted in teal has received final platting.

2 Q And can you explain final platting versus
3 preliminary platting.

4 A Sure. Preliminary platting is the stage in
5 the development process where the entire master plan
6 is laid out and you know where the neighbors or
7 subpods are going to be. The final plat stage is the
8 actual creation of the lots to be sold, the rights of
9 way and easements.

10 MR. HARVEY: Also, Mr. Witness, I hate to
11 interject, but can you tell me what teal is.

12 THE WITNESS: It is the color that is on the
13 map that is not quite lemon green and not quite
14 yellow. It's the area that's represented as Pod 4.
15 And it is located at the southern central area of the
16 area north of Galligan Road and Freeman Road.

17 MR. HARVEY: Okay. Forgive me.

18 BY MS. LICUP:

19 Q Thank you, Mr. Keller.

20 When was the conservancy development
21 approved by the Village of Gilberts.

22 A The annexation agreement was approved

1 October 31st, 2005.

2 Q And what kind of features are included in
3 the approved plans?

4 MR. MURPHY: Can I just -- this is apri po of
5 something. This is an objection for Mr. Harvey.
6 This sounds a like friendly cross to me. I mean,
7 she's asking him to expound upon his testimony.
8 These two parties are aligned. I don't know that --
9 that's my objection.

10 JUDGE DOLAN: You're objecting because it's
11 friendly cross? Is that what you're saying?

12 MR. MURPHY: Yes, sir.

13 JUDGE DOLAN: I mean, I think we've done a
14 little bit of friendly cross already during this
15 proceeding, Counsel. So I don't know if I can take a
16 stand at this point. But I'm going to overrule your
17 objection.

18 Thank you.

19 MR. HARVEY: I suspect Mr. Murphy is doing that
20 pursuant to my request that it be done.

21 BY MS. LICUP:

22 Q Mr. Keller, does that Exhibit 2.2 show

1 features that are included in the final plans?

2 A The final plan -- if you're referring to
3 the final plan that accompanies the final plat for
4 Pod 4, it represents the surface features and a
5 layout of the road alignment, yes.

6 Q Okay. And the Village of Gilberts has
7 voted on this platting?

8 A Yes. With the approval of annexation
9 agreement in 2005, the property became fully entitled
10 to develop out in accordance with the plan that is
11 laid out here.

12 Q Okay. If Neumann Homes resumes work on the
13 development, what are their obligations as far as
14 developing the property in accordance with the
15 approved plan?

16 A They would need to follow everything that
17 is laid out in the plan that you see here.

18 Q Okay. If Neumann Homes is not able to
19 continue working on the project, what obligations
20 would a new developer have as far completeness?

21 A A new developer would be obligated to pick
22 up where Neumann Homes had left off. And they would

1 bound by the same terms of the annexation agreement
2 that Neumann Homes had.

3 Q Does Gilberts Exhibit 2.2 show the location
4 of the park that you had mentioned in your testimony?

5 A It does.

6 Q Can you come up to the chart and look at
7 it.

8 A Sure.

9 I direct your attention to the west
10 side of Galligan Road. Midpoint, kind of the
11 north-south access of the development, there is a
12 20-acre park that was identified in the annexation
13 agreement of the preliminary plan for this area right
14 here. It was intended to serve as a regional park to
15 serve a conservancy as well as a future development
16 in the area.

17 Q And while you're up there, there was some
18 earlier testimony about the location of the school.

19 Is the school located correctly on
20 Exhibit 2.2, or has it moved since this exhibit has
21 been...

22 A The school property is accurately reflected

1 on this map.

2 MR. LICUP: I have no further questions.

3 JUDGE DOLAN: Mr. Murphy?

4 CROSS-EXAMINATION

5 BY

6 MR. MURPHY:

7 Q Good afternoon, Mr. Keller. My name Joe
8 Murphy. I represent the Village of Huntley, and I
9 have some questions for you. If you don't understand
10 them, please let me know. If you answer them, I'll
11 assume you understood the question.

12 In your direct testimony you indicate
13 that you're the Village administrator of the Village
14 of Gilberts. What is the title -- how does the title
15 of administrator differ from mayor or manager?

16 A Typically, a village administrator denotes
17 a role of chief operating officer in a mayor council
18 form of government.

19 Q Is there a mayor in Gilberts?

20 A There is a Village president --

21 Q Okay.

22 A -- it would be equivalent to mayor in the

1 community.

2 Q And is there a Village board?

3 A There are six trustees, yes.

4 Q Trustees.

5 Have the trustees of the Village taken

6 any formal action on ComEd's routes or any other

7 routes?

8 A No, they have not.

9 Q So is there any formal action on the part

10 of the Village of Gilberts to oppose the original

11 Freeman/Galligan Route with a modified

12 Freeman/Galligan Route?

13 A No.

14 Q And you say in your rebuttal testimony that

15 at risk here at an \$8.3 billion investment; right?

16 MR. ROBERTSON: Million.

17 BY MR. MURPHY:

18 Q 8.3 million.

19 I'm looking at Line 36 in your

20 rebuttal testimony?

21 A On which page, sir?

22 Q On page -- they're not numbered. Line 36.

1 A Okay.

2 Q You indicate there that at jeopardy is an
3 \$8.3 million investment.

4 That's your testimony?

5 A At the time, yes.

6 Q But the Village board hasn't taken any
7 action on this?

8 A They have not endorsed or passed a
9 resolution publically imposing the Village of
10 Huntley's Route submittal to the ICC.

11 Q And have they passed a resolution
12 publically authorizing you to take that action?

13 A They have not publically authorized me to
14 take that action.

15 Q Have you read the testimony that Mr. Tomaso
16 submitted in this docket?

17 A I did.

18 Q Did you read about how Huntley had to
19 reopen annexation agreements with regard to Phase 1
20 and Phase 2 of the same project?

21 A Yes.

22 Q Has Gilberts have ever had to renegotiate

1 an annexation agreement to do a power line for any --
2 or for any other reason.

3 A I can't answer that.

4 Q In your tenure there has Gilberts ever had
5 to renegotiate an annexation agreement?

6 A In my tenure, no.

7 Q How many annexation agreements have you
8 handled?

9 A In what span?

10 Q Since you've been at Gilberts.

11 A Working through the implementation of this
12 annexation agreement.

13 Q So you indicated this annexation agreement
14 was in 2005?

15 A Yes. I was not on staff at the time of its
16 approval, but I am working with its implementation
17 now.

18 Q Do you agree that it's possible to
19 renegotiate an annexation agreement after it's been
20 entered?

21 A It is possible.

22 Q Is it possible for a village to change the

1 platting of something on which it has passed final
2 platting?

3 A It is possible with the compliance of
4 agreement of the property lines.

5 Q And you answered some questions from
6 Ms. Licup about -- sorry.

7 You answered some questions from
8 Ms. Licup about the Village of Gilberts having voted
9 on this, on this particular plot plan that you're
10 referring to here as Pod 4; correct?

11 A Yes, I did.

12 Q And if another developer came in and wanted
13 to change that layout, they would have to get your
14 approval, wouldn't they?

15 A Yes.

16 Q That was your testimony.

17 Is it your testimony that you would
18 refuse to give approval if another developer came in
19 and asked for a slightly different layout?

20 A In my professional recommendation to the
21 board and president, I would discourage such a move.

22 Q And if this Commission were to direct

1 Commonwealth Edison by the outcome of this case to
2 route their transmission line along the modified
3 Freeman/Galligan Route, would it be your
4 recommendation to your board that you not work with
5 the developer to make any appropriate changes to the
6 plat?

7 A Can you repeat the question, please?

8 Q Yes.

9 If this Commission were to direct
10 ComEd to use the modified Freeman/Galligan Route
11 that, as you've pointed out, goes through the
12 conservancy, would it be your recommendation to your
13 Village trustees that you not work with the developer
14 to make changes in the plat to accommodate the
15 transmission line?

16 A If it were so directed by the Commission,
17 we would consider looking at alternatives.

18 Q So you're saying it's possible that, even
19 if directed by the Commission, you would tell any
20 developer they had to stick with this plan?

21 A It's possible.

22 Q Is it likely?

1 A I can't answer that.

2 Q In your rebuttal, at Lines 33 and 34, you
3 indicate that a preliminary plan has been approved to
4 build 985 well units.

5 What do you mean there by
6 "preliminary"?

7 A Preliminary plan approval is the stage in
8 the development process, as I mentioned before, where
9 the entire subdivision is laid out.

10 Q And that differs from final approval -- you
11 might have explained this to Ms. Licup. I'm sorry.
12 I don't recall.

13 How does that differ from final
14 approval?

15 A Preliminary plat plan approval lays out the
16 subdivision design to show the overall effect of the
17 end result of the development. The final plat
18 approval creates the lots to be sold as well as the
19 rights of way.

20 Q So, as I understand it, when you're talking
21 about preliminary plat approval, it's your testimony
22 that, for example, all of Neighborhood 8 here -- I'm

1 sorry -- Neighborhood B in the top left corner,
2 that's all preliminary plat approval; that's not
3 final?

4 A That's correct.

5 Q And over here where we see Lift Station 1
6 and another neighborhood -- I don't know if it's part
7 of B -- that's all just preliminary plat approval;
8 that's not final?

9 A That is correct.

10 Q And over here, with regard to Neighborhood
11 D that is on -- just abuts Galligan Road here, just
12 north of Freeman Road, preliminary or final?

13 A That would be preliminary.

14 Q And all of this neighborhood over here
15 that's indicated as Neighborhood F, preliminary or
16 final?

17 A Preliminary.

18 Q And your map doesn't show -- in fact,
19 there's actually more to Neighbor B to the north
20 that's not on your exhibit. So this isn't complete.

21 A The exhibit that we had provided -- you are
22 correct. I apologize. The exhibit that has been

1 reduced to focus somewhat on the area in question,
2 with the proposed modified Galligan Route, clips off
3 the northern part of the development as well. It
4 looks like the eastern part of Neighborhood F.

5 Q So this part over here that's either
6 Neighborhood F -- or I see there's an indication of a
7 Neighbor G.

8 Is that what's actually over here on
9 the east?

10 A I believe so, yes.

11 Q The table here indicate G, but there's
12 nothing there.

13 But that's all preliminary?

14 A It's all preliminary.

15 Q And Ms. Licup asked you about the school
16 sites. She asked you if that's where it is, and you
17 said "yes"?

18 A Yes.

19 Q Can you come show me where on that site the
20 school is?

21 A I cannot without a scale and without the
22 drawings of the plan.

1 Q So you need a scale and the drawings just
2 to see the school -- indicate where the school
3 building is?

4 A In reference to the drawing that we have
5 here, yes.

6 Q Can you tell me whether it's at the north
7 or south end of that property?

8 A It's at the north end.

9 Q It's at the north end. It's up here?

10 A If you were to move your finger, I would
11 say, where the text is, the top line of the text,
12 within the blue box, in the vicinity of that line,
13 the top line there.

14 Q And the school is built; right?

15 A The school is constructed, yes.

16 Q Is it open?

17 A It is open.

18 Q Are there students attending?

19 A There are.

20 Q How many students go to that school?

21 A I don't recall the number.

22 Q Is it a hundred? Is it a thousand?

1 A I believe it's 500.

2 Q Are there any other -- is that an
3 elementary school?

4 A It is elementary.

5 Q Are there other elementary schools in the
6 Village of Gilberts?

7 A No.

8 Q Is that water tank that's indicated up
9 there, is that in service right now?

10 A Yes.

11 Q And what's it providing water for?

12 A It is providing water for fire suppression
13 as well as backup supply for the school site, as well
14 as for what would become the rest of the conservancy.

15 Q And what would be the rest of the
16 conservancy, just so I understand again? And you
17 said this is all preliminary plat approval here at
18 the top of the map.

19 Has anything been built?

20 A No, not in that area.

21 Q And you indicated -- I'm sorry.

22 Is this part of Neighborhood B? And,

1 for the record, I'm pointing to the part of the
2 conservancy that is north of the Kishwaukee and right
3 on Galligan Road.

4 Is that part of Neighborhood B, or is
5 that a different neighborhood?

6 A I'm not sure.

7 Q How familiar are you with the conservancy?

8 A Familiar with the conservancy development
9 plans? Is that what you're asking?

10 Q Yes.

11 A Yes. Fairly familiar.

12 Q I mean, this is one of your exhibits. Have
13 you studied it?

14 A Fairly, yes.

15 Q Okay. So you don't know if this is
16 Neighborhood B -- you don't whether this is
17 Neighborhood D or Neighborhood B or what? I mean,
18 you're welcome to refer to your own exhibit if that
19 helps you.

20 A B is the area to the northwest.

21 Q Am I correctly indicating that?

22 A In that general area, yes.

1 Q I'm really just trying to make sure that
2 the Judge and you and I are talking about the same
3 thing.

4 A Sure. Neighborhood D is the area north of
5 the Kishwaukee River --

6 Q This is D?

7 A -- extending down to the Kishwaukee River.

8 Q That's the Kishwaukee River?

9 A Correct.

10 Q This area here?

11 A Right.

12 Q Okay. And am I right that this is
13 Neighborhood C, that includes your teal area?

14 A It would include that area, yes.

15 Q And over here south of the Kishwaukee and
16 north of Freeman Road but directly on Galligan is
17 Neighborhood E?

18 A That is correct.

19 Q Okay. And when we talk about Neighborhood
20 F, we're talking about this quadrant that is
21 kitty-corner from the rest of it?

22 A Yes.

1 Q And then Neighborhood G is someplace out
2 here?

3 A It would be to the east of that.

4 Q Okay. There are two model homes here?

5 A Correct.

6 Q Other than the model homes, has anything at
7 all been built in the conservancy? Any homes?

8 A Two foundations.

9 Q Okay. Are the foundations in the same
10 neighborhood?

11 A They are.

12 Q Are they next to the model homes?

13 A I believe they're a couple lots away.

14 Q Okay. Now, just so I understand, is it
15 your opinion that if the transmission route -- if the
16 Commission orders the modified Freeman/Galligan
17 Route, that the conservancy will never be built in
18 any form?

19 A I can't answer that. I don't know.

20 Q Well, what's your opinion?

21 A It would inhibit its ability to develop.

22 Q But is it your opinion that it could not be

1 developed in any form?

2 A No.

3 Q But when you indicated -- and, again, I'm
4 looking at your rebuttal testimony at Line 36 -- that
5 it would jeopardize an 8.3 million investment, that's
6 the entire investment that the Village has made there
7 to date, isn't it?

8 A No.

9 Q No? What is that?

10 A The 8.3 million investment is an estimate
11 put together by our Village engineer at the time of
12 the rebuttal testimony that reflected the value of
13 the improvement that had been extended to an through
14 the conservancy development associated with what is
15 referred to SSA 19, Special Service Area 19.

16 Q Okay. And to jeopardize -- I mean, is it
17 your testimony that you're at risk of losing that
18 entire 8.3 million if the route is used as a modified
19 Freeman/Galligan?

20 A It jeopardizes the ability to repay the bon
21 that was issued for the improvement for SSA 19.

22 Q But when you say "jeopardize," are you

1 saying that you will lose the entire amount or just
2 some part of it?

3 A I don't know. I was anticipating that it
4 could be some or all.

5 Q And in order to lose it all -- is it
6 possible that you would lose it all if somebody built
7 the conservancy in some form?

8 A I'm sorry. If you could repeat that
9 question.

10 Q If somebody built the conservancy in
11 substantially the same form as it is today, is it
12 possible that you would lose all that money?

13 A It is possible, but unlikely.

14 Q Exhibit 2.2, this is attached to the
15 rebuttal testimony. I'm looking here in the corner,
16 and it says, "Plotted 1/10/08".

17 Do you know what that refers to?

18 A Yes. That is when I asked the engineer to
19 superimpose the information that I had requested onto
20 the exhibit that had been provided as a preliminary
21 plat exhibit to the annexation agreement.

22 Q Okay. And when did you get his work back?

1 A I don't recall -- in the vicinity of the
2 10th.

3 Q Okay. About the 10th of January.

4 Are you aware that on December the
5 14th I propounded to your attorney some data
6 requests?

7 A Yes.

8 Q And did your forward those data requests to
9 you?

10 A He did.

11 Q And did he advise you that according to the
12 Commission schedule in this case, these data requests
13 were supposed to be responded to within 21 days?

14 A He advised me as the deadline approached,
15 yes.

16 Q As which deadline approached?

17 A The deadline that was identified in your
18 data requests, the end of the 21 days.

19 Q And do you recall that that date deadline
20 that was identified in my data request was actually
21 January 4th?

22 A I don't recall the exact date.

1 Q Would you accept, subject to check, that
2 that was 21 days after December the 14th?

3 A It would be 21 calendar days, yes.

4 Q As part of that, we gave you a data request
5 that said, "Please provide a site plan for the
6 conservancy that shows the development in conjunction
7 with surrounding and existing roads sufficient to
8 place the site plan for the conservancy in scale
9 context to the existing roads and surrounding land
10 uses."

11 Do you remember that data request?

12 A Yes.

13 Q And, in response to that, you provided us
14 with a map that I believe is Exhibit 2.1 to your
15 testimony that has the red dotted line?

16 A Yes.

17 Q And when was this map created?

18 A Well, the base map itself, again, was
19 created in -- the initial development was 2005. I
20 drew the map in the vicinity of January 4th, 5th and
21 through the time that I was putting a response
22 together.

1 Q And I notice at the bottom of the map it
2 actually refers to this as Clubland Gilberts?
3 A Yes.
4 Q What is that?
5 A The Clublands was the original name of the
6 development.
7 Q When did that name change?
8 A It has not been officially changed except
9 for marketing materials by Neumann Homes.
10 Q So when you say "officially," does it have
11 that same formal name now in any other documents?
12 A I don't recall.
13 Q Okay. So you created this you said around
14 the 4th?
15 A In the vicinity of that time line, yes.
16 Q Okay. Do you know when your counsel
17 provided it to me?
18 A I do not.
19 Q And would you accept, subject to check,
20 that he did not provide it to me until January 8th?
21 A I don't know. I would suppose --
22 MR. MURPHY: May I have permission to ask

1 counsel if --

2 MR. ROBERTSON: We'll stipulate, if that's what
3 your record shows.

4 BY MR. MURPHY:

5 Q And do you recall we also provided to you a
6 data request that said, "Please identify all
7 infrastructure including, without limitation, all
8 areas that had been graded, all roads that had been
9 completed, all utility lines and structures and all
10 habitable structures that are currently in place
11 within the conservancy."

12 Do you recall that question?

13 A Yes.

14 Q And, in response to that, you produced what
15 I have as Exhibit 1. But I believe -- and you can
16 please confirm this -- it's actually the same
17 document as your Exhibit 2.2?

18 A That is correct.

19 Q And the only indication -- I mean,
20 literally 2.2 is what you gave us. So that is your
21 complete and full indication of all areas that have
22 been graded, all roads that have been completed, all

1 utility lines and structures, and all habitable
2 structures. That's all the information you have on
3 that?

4 A At this time, yes.

5 Q To this day, that's all the information you
6 have on that?

7 A In that format, yes.

8 Q In any documentary format?

9 A I have engineering reports that would
10 suggest -- to indicate that work has been done,
11 inspection sheets; but nothing that says specifically
12 by pinpoint or by GPS location or anything that says
13 where the grading has been.

14 Q Okay. And are you aware -- do you know
15 when your counsel provided that document to us?

16 A I do not.

17 Q And would you accept, subject to your
18 counsel's confirmation, that it was provided to us on
19 January the 10th?

20 A Yes.

21 Q And do you know when the rebuttal testimony
22 was due in this docket?

1 A I don't recall.

2 Q Your testimony was filed on January 11th.

3 Would that refresh your recollection?

4 A If you say so, yes.

5 Q Let me ask you something about your

6 background:

7 You're a planner -- I'm sorry.

8 What's your degree in?

9 A I have a master's degree in urban and

10 regional planning.

11 Q Okay. And what does that entail? What

12 does an urban regional planner do?

13 A Develop expertise in reviewing, evaluating

14 different types of plans for development; looking at

15 infrastructure and systems; looking at housing,

16 economic factors.

17 Q So is part of your job to review

18 development plans like the ones we see here in

19 Exhibit 2.2?

20 A It is.

21 Q Do you review a significant number of those

22 plans?

1 A I have not in my tenure, no.

2 Q And when you say your tenure, you mean your
3 tenure with the Village of Gilberts?

4 A That's correct.

5 Q What was your employment before you were
6 with the Village of Gilberts?

7 A I was a City planner for the City of DeKalb
8 and I was Director of the Metropolitan Planning
9 Organization for DeKalb.

10 Q How long did you hold that position?

11 A I was there 8 years.

12 Q And in your role there did you review
13 plans?

14 A Yes, I did.

15 Q Did you review a significant number of
16 plans?

17 A I would say, yes.

18 Q Did you review plans like the ones that are
19 in Exhibit 2.2?

20 A Yes.

21 Q Are you proficient at reading plans?

22 A Yes.

1 Q When did you file your direct testimony in
2 this case that has the date November 2nd on it?

3 A I don't recall.

4 November 2nd is the date that was put
5 on the testimony.

6 Q Okay. Do you recall -- on November 2nd,
7 had you reviewed the modified Freeman/Galligan Route?

8 A Which one?

9 Q The modified.

10 A The modified route?

11 Q The modified route.

12 A The modified route -- I was not aware of
13 the modified route at the time of my direct
14 testimony.

15 Q Is that because the testimony supporting
16 that route was filed the same day of your direct?

17 A I was not aware of it at the time of my
18 testimony.

19 Q At the time of your testimony what
20 Freeman/Galligan route were you aware of?

21 A The one that was going along Freeman Road
22 and then north along Galligan Road.

1 Q And that one did not actually come through
2 the conservancy; correct?

3 A Well, it would have affected or would have
4 been possibly located on the north or south side of
5 Freeman Road and possibly on the west side of
6 Galligan Road.

7 Q When you testified in your direct
8 testimony, did you raise any issues about the
9 possibility of losing lots or impacting
10 infrastructure as a result of the Village of
11 Huntley's Route?

12 MR. ROBERTSON: Are talking about his direct
13 testimony?

14 MR. MURPHY: In his direct testimony. And I
15 believe -- please review it all, but I believe the
16 most pertinent part is on Page 4.

17 MR. ROBERTSON: May I have the question read
18 back.

19 (Whereupon, the record was read
20 as requested.)

21 THE WITNESS: No, I did not.

22 BY MR. MURPHY:

1 Q You did mention the Gilberts Elementary
2 School; right?

3 A Yes, I did.

4 Q So did you raise any questions in this case
5 regarding the impact on the infrastructure of the
6 conservancy before you filed your rebuttal testimony
7 on January 11th?

8 A No.

9 Q With that same set of data requests, we --
10 well, I'll ask you are there currently any current
11 petitions to annex, rezone, or subdivide any property
12 currently under consideration by the Village of
13 Gilberts?

14 A And my response is still there are no
15 petitions currently before the Village.

16 Q Okay. Are there any other developments
17 going on in the Village of Gilberts?

18 A In addition to the conservancy?

19 Q In addition to the conservancy.

20 A Yes, the development referred to as
21 Gilberts Town Center.

22 Q Where is that?

1 A It's located south and east of the
2 conservancy, located generally north of Route 72 and
3 East Galligan Road, along the realigned Terrell Road
4 (phonetic).

5 Q Okay.

6 A There is another development located called
7 the Reamer Center (phonetic). It's an industrial
8 park located at the southwest corner of Terrell Road
9 and Route 72.

10 Q Is that it?

11 A There is an industrial park -- I don't
12 remember the name of it -- at Industrial Drive which
13 has outstanding lots located on West Route 72.

14 Q Are there any other developments currently
15 going along -- let me step back.

16 I don't know that you've seen this,
17 but this has been admitted as Huntley
18 Cross-Exhibit 2.

19 A Okay.

20 Q Do you recognize the municipal boundaries
21 of the Village of Gilberts?

22 A Yes.

1 Q Is that accurate?

2 A Yes.

3 Q Do you recognize the municipal boundaries

4 of the Village of Huntley?

5 A The black line?

6 Q Yes.

7 A Yes.

8 Q Is that accurate?

9 A I don't know.

10 Q Is there anything about it that looks out

11 of place to you?

12 A I don't have the knowledge of the recent

13 developments.

14 Q Okay. Do you recognize the white line as

15 outlining your planning area?

16 A Yes.

17 Q And do you recognize the rest of the white

18 line as outlining Huntley's planning area?

19 A Yes.

20 Q What's the significance of the planning

21 areas?

22 A The Villages of Huntley and Gilberts had

1 entered into a boundary agreement in which the
2 parties would not attempt to annex or develop
3 property -- develop or annex property on the other
4 side of that boundary.

5 Q Is it your expectation that eventually what
6 is currently the white line that is the border of the
7 planning areas will eventually be the city limits of
8 both cities?

9 A In respect to each other, yes. The Village
10 of Gilberts has other boundary agreements encircling
11 it. And we would be affected by those as well.

12 Q Thank you.

13 Are there any other current agreements
14 going along this area -- I'm showing the area -- I'm
15 sorry -- yeah, going along this area in Gilberts?

16 A Which area?

17 Q This area which is the line that starts the
18 conservancy and moves west of Powers Road?

19 A Along Freeman Road, or along the modified
20 alternative route?

21 Q The modified alternative route.

22 A Not to my knowledge.

1 Q Okay. And are there any other developments
2 currently going along north of the conservancy on
3 Galligan Road?

4 A Not currently, no.

5 Q And are there any developments going on
6 north of the other conservancy piece that are east of
7 Galligan Road?

8 A Not to my knowledge.

9 Q I want to go back to your comment about
10 Town Center.

11 A Yes.

12 Q Are you aware of whether Power Development
13 (phonetic) is requesting a replat of part of the
14 plats of that development?

15 A Yes, they have requested it.

16 Q And do you have any opinion as to whether
17 the Village or Village board is likely to grant it?

18 MR. ROBERTSON: Objection. That calls for
19 speculation. He can't speak for the board. Also,
20 it's a question of relevance. I don't know if counsel
21 is going to explain how it relates to his testimony.

22 MR. MURPHY: It relates to his testimony

1 because he's testifying about the likelihood -- he
2 has testified about the likelihood that the Village
3 of Gilberts would negotiate with Neumann Homes or any
4 other developer to change the plat of the
5 conservancy. I just want to understand that that's
6 something that the Village of Gilberts does.

7 JUDGE DOLAN: Overrule the objection.

8 THE WITNESS: Can you repeat the question.

9 BY MR. MURPHY:

10 Q Do you have any expectations as to whether
11 your Village board will grant Power Development's
12 request?

13 A I can't say what the board will decide, but
14 I would go so far as to say it would be a positive
15 staff recommendation.

16 Q So you would recommend that to your board?

17 A Yes, I would.

18 Q Thanks.

19 MR. MURPHY: I would like to mark as Huntley
20 Cross-Exhibit 13.

21

22

1 (Whereupon, Huntley
2 Cross-Exhibit No. 12 was marked
3 for identification.)
4 BY MR. MURPHY:
5 Q It's a response to data request. Will you
6 look at that and let me know if you recognize that.
7 A I do.
8 Q Can you tell me what that is.
9 A It is my response to your Data Request 2-3.
10 Q And the data request is, "Please explain to
11 the best current knowledge of the Village of Gilberts
12 what the development schedule is for the
13 conservancy."
14 Could you please read your response.
15 A "Response: The Village of Gilberts has not
16 received any notification from Neumann Homes, Inc.,
17 regarding the current development schedule for the
18 conservancy. To date, Neumann Homes has extended
19 infrastructure and completed the construction of a
20 water tower to allow the successful scheduled opening
21 of the new Gilberts Elementary School."
22 Q Thank you.

1 Is that still the case?

2 A That is true.

3 MR. MURPHY: Your Honor, at this point I'm
4 going to try to cut to the chase here. Based on the
5 testimony of this witness, that he is very familiar
6 with plans and very familiar with conservancy, it
7 would be my intention to show him Huntley
8 Cross-Exhibits 10, 11, and 12, the alternate plans,
9 and to ask him if he can compare those to his own
10 exhibit and conclude that they are, in fact, the same
11 basic design, and identify the differences, and
12 render some opinions as to whether those differences
13 are reasonable, potential development plan.

14 And rather than carry the charts
15 around and get into another discussion with
16 Mr. Robertson, I thought I would just say that here.
17 I guess, again, on the basis of that, I would like to
18 show the witness those exhibits and ask him those
19 questions.

20 MR. ROBERTSON: I don't mind. I think you have
21 every right to ask him questions relating to whatever
22 it is you want to ask him about in that area. But my

1 objection still goes to the fact that the document
2 that you want to use to cross him contains -- I don't
3 know what the right word is -- recommendations or
4 elements that were proposed by an engineer that was
5 hired by the Village of Huntley to superimpose on
6 this exhibit.

7 And we're talking about A, B, and C
8 again. And we've already had this argument. I think
9 questioning about possible changes is within your
10 right. As far as the validity of the exhibit, we've
11 already been down that road.

12 MR. MURPHY: And, your Honor, this witness has
13 stated that he has a proficiency in reading
14 development plans. I believe that he has the
15 independent ability to look at our Exhibits A, B, and
16 C and determine what they are and how they compare to
17 the conservancy of his own exhibit. And I believe
18 that the only efficient way to ask him whether
19 particular changes are within the realm of an
20 appropriate development plan would be to actually put
21 the demonstrative exhibit in front of him and let him
22 say, No, you couldn't do this or, yes, you could do

1 this.

2 JUDGE DOLAN: I guess the biggest problem I
3 have with this exhibit is that obviously it was
4 prepared for this case -- prepared for purposes of
5 litigation.

6 MR. MURPHY: Yes, it was prepared as a
7 cross-examination exhibit.

8 JUDGE DOLAN: Okay. No one, prior to this, got
9 notice -- prior to today -- that this document
10 existed; is that correct?

11 MR. MURPHY: That's correct. That's true with
12 many cross-examination exhibits.

13 JUDGE DOLAN: Well, but most of the other
14 cross-examination exhibits, at least, were disclosed
15 in this docket.

16 MR. MURPHY: I'm not sure I agree with that,
17 but I understand your point.

18 JUDGE DOLAN: Well, I'm just saying, though,
19 that you -- well, I mean, what -- are you saying
20 besides data requests?

21 MR. MURPHY: I mean, for example, Ameren
22 Exhibit 12, Mr. Zibart brought that here the morning

1 --

2 THE COURT: ComEd's.

3 MR. MURPHY: I'm sorry. ComEd's.

4 Mr. Zibart brought that the morning of
5 the hearing and showed us. But I think -- more
6 importantly, I think it is not at all unusual for a
7 cross-examination exhibit to be presented in a manner
8 of some surprise as long as the witness has the
9 capacity to look at it, evaluate it, and make
10 statements on it.

11 And this whole thing about it was
12 prepared by engineers that we haven't met -- I mean,
13 the face of Exhibit 2.2, it is what it is. And I
14 believe that Mr. Keller can look at a drawing like
15 that and draw a professional opinion, as I believe he
16 probably has for the conservancy. Because, you know,
17 when he says, Here's where everything is, in answer
18 to our data request, he actually gave us that map.
19 That's his professional opinion of what the status of
20 the development is.

21 I believe it's in his professional
22 capacity to look at a comparative piece of paper -- I

1 mean, we're talking about one paper lot against
2 another paper lot -- that he has the capacity to look
3 at that and say, Yes, you can do that or, no, you
4 can't do that.

5 And I think that that's a proper way
6 to use cross-examination even if it hasn't been
7 disclosed to the witness before he steps onto the
8 stand.

9 MR. ROBERTSON: You're assuming that that
10 exhibit that you have prepared in your, and your
11 engineer prepared for you, represents the -- show
12 soil conditions and other things that would influence
13 your ability to do the stuff that you're talking
14 about.

15 You're asking for an engineering
16 opinion about what's viable of somebody's who's not
17 an engineer. And your own witness hasn't recommended
18 a particular alignment for this line. And it's
19 ComEd's engineers who would have to do the soil
20 testing and all the other testing that would be
21 required to move these things out here. And there's
22 no facts in evidence that what you're suggesting is

1 practical -- or what you may suggest is practical.

2 And you should have brought your engineer to identify
3 the exhibit in some form or fashion.

4 MR. MURPHY: I am not asking him to render an
5 opinion on any more information than every other
6 opinion about the impact of this line on the
7 conservancy has rendered on, which is a site plan for
8 the conservancy.

9 Nobody in this case -- not your
10 client, not Neumann Homes, not anybody else -- has
11 said that the soil conditions around here are such
12 that it's got to be here; and, therefore, putting a
13 line here will ruin everything.

14 I'm asking him to give an opinion on
15 the same set of information he is using to opine that
16 there will be significant harm.

17 MR. ROBERTSON: Well, we beat this horse to
18 death three times already. So I don't want to waste
19 a quarter of the party's time anymore and argue. I
20 think the exhibit was properly excluded, and this is
21 the third try to get it into evidence. I don't think
22 it's appropriate, but I'm done arguing about it.

1 MR. MURPHY: Your Honor, I will await your
2 ruling.

3 JUDGE DOLAN: I am going to stand by my
4 original ruling that rejected that exhibit.

5 MR. MURPHY: Thank you, your Honor.

6 BY MR. MURPHY:

7 Q You indicate in several places in your
8 testimony that Gilberts, by having part of this line
9 in its jurisdiction, has suffered its fair share from
10 ComEd.

11 And I'm going to put up here -- it's
12 exactly the same exhibit as Huntley Cross-Exhibit 2.
13 But I've suggested -- and you're welcome to come and
14 check -- that the mileage within the annex boundaries
15 of Phase 1 -- I'm sorry -- within the planning area
16 of Gilberts is the Phase 1 line. Absolutely none of
17 it impacts Gilberts; right?

18 A Correct.

19 Q And the Phase 2 line of this project,
20 absolutely none of it impacts Gilberts; correct?

21 A Correct.

22 Q And the Phase 3 line, if you -- within the

1 municipality's planning areas -- I'm sorry. You know
2 what, I'll save this for argument.

3 MR. MURPHY: I have no further questions.
4 Thank you.

5 JUDGE DOLAN: Mr. Lascari?

6 MR. LASCARI: I have no questions for this
7 witness, your Honor.

8 JUDGE DOLAN: Any redirect, then --

9 MR. SHAY: Judge, excuse me. I was wondering
10 if I could request leave for just a question of two
11 in light of what came out on cross by Mr. Murphy?

12 JUDGE DOLAN: Yes.

13 MR. SHAY: Thank you.

14 CROSS-EXAMINATION

15 BY

16 MR. SHAY:

17 Q Mr. Keller, good afternoon. We're going to
18 go back to your --

19 JUDGE DOLAN: Mr. Shay, could you identify
20 yourself for the witness, please.

21 BY MR. SHAY:

22 Q My name a Bill Shay, and I'm an attorney

1 for the Kreutzer Road Parties.

2 A Yes.

3 Q Going back to your distinction between --

4 or discussion about the difference between

5 preliminary and final plats --

6 A Yes.

7 Q -- I just want to understand.

8 Much of the conservancy development

9 has received preliminary plat approval; is that

10 correct?

11 A Yes.

12 Q Especially the northern portions?

13 A Yes. The preliminary plan was approved by

14 the annexation agreement.

15 Q Okay. Can you tell me what that means.

16 A The preliminary plan by itself indicates

17 the layout under which the entire development will be

18 built out.

19 Q The layout?

20 A Where the lots will be located, the general

21 features.

22 Q Does it mean, also -- or imply that

1 other -- that land acquisition has occurred and, if
2 necessary, approval obtained?

3 A In order to secure the level of
4 entitlement, the property owner would either have to
5 have control of the property or ownership of the
6 property or the consent of the property owners that
7 would be involved.

8 Q Is it your testimony that that has been
9 achieved for all of the northern half of the
10 conservancy by Neumann Homes?

11 A To my knowledge, yes.

12 Q Are you familiar with what's called Burn
13 Lane that intersects Kreutzer Road?

14 A No, I'm not, not offhand. If I were shown
15 it on the map, I might recognize it.

16 Q Okay. And you don't know whether a private
17 lane called Burn Lane is within the conservancy
18 preliminary platted area?

19 A I don't recall.

20 Q You don't know?

21 A I don't recall.

22 Q And you don't know that, if it is, whether

1 Neumann Homes has obtained approval from the owner of
2 that lane for their use of that lane in connection
3 with the development?

4 A I don't have that knowledge, no.

5 Q So you're not saying it is?

6 A I'm not saying it is or is not.

7 Q So you really don't know if Newman Homes
8 has obtained all the required approvals from existing
9 land owners to develop the conservancy in a way that
10 has been preliminarily platted?

11 A I know that the annexation agreement and
12 preliminary plan approval were signed by all of the
13 owners of record with either Neumann Homes or who had
14 contract a purchase ability with at the time. I
15 don't recall all the names of those parties.

16 But at the time of the annexation
17 agreement, all of the parties that would be affected
18 and bound by annexation agreement would have been
19 either signed off or would have been represented by a
20 power that would have been able to sign off on their
21 behalf?

22 MR. SHAY: Just a moment, please.

1 Thank you for indulging me, your
2 Honor. No further questions.

3 MR. ROBERTSON: May I have two minutes?

4 JUDGE DOLAN: Certainly.

5 (Whereupon, a brief recess was
6 taken.)

7 REDIRECT EXAMINATION

8 BY

9 MR. ROBERTSON:

10 Q Mr. Keller, you were asked by Mr. Murphy
11 about -- I can't remember the exact question, but the
12 questions related to your authority from the Village
13 of Gilberts to file your testimony.

14 What authority did you obtain from the
15 Village of Gilberts to filing of the testimony?

16 A That was directed by the Village president
17 board of trustees in a closed session to retain
18 counsel to represent the Village interests in this
19 process.

20 Q And the purpose of the Village's -- for
21 that purpose, you were intending to support the
22 Commonwealth Edison proposed route and oppose the

1 Freeman/Galligan Route?

2 A The discussion was regarding -- yes, it was
3 regarding the relative impassing two routes.

4 RECROSS-EXAMINATION

5 BY

6 MR. MURPHY:

7 Q At any time did the Village board of
8 Gilberts go into a public session before the citizens
9 of Gilberts who elected them and indicate that they
10 should or ought to or were going to take a position
11 to support the ComEd route or oppose the Huntley
12 Route?

13 A No, they did not.

14 MR. MURPHY: No further...

15 THE COURT: Any other questions, Mr. Robertson?

16 MR. ROBERTSON: No, sir.

17 THE COURT: Okay.

18 All right. Thank you, Mr. Keller.

19 MR. HARVEY: Your Honor, the Staff will call
20 Mr. Greg Rockrohr. Before we do that, however, I'd
21 like to take care of a housekeeping matter so I don't
22 forget it.

1 MR. MURPHY: Me next.

2 THE COURT: Okay. Hold on before you go.

3 Are you going to put this

4 Cross-Exhibit 13?

5 MR. MURPHY: I would move for the admission of

6 Cross-Exhibit 13.

7 THE COURT: Any objections?

8 MR. LASCARI: No objection.

9 MR. HARVEY: That would be the Gilberts

10 response to Huntley Data Request 2-3?

11 THE COURT: Yes.

12 MR. HARVEY: None from Staff.

13 MS. LICUP: No objection.

14 MR. LASCARI: No objection.

15 THE COURT: All right. Huntley

16 Cross-Exhibit 13 will be admitted into the record.

17 (Whereupon, Huntley

18 Cross-Exhibit No. 13 was

19 admitted into evidence.)

20 MR. HARVEY: I apologize for jumping the gun.

21 THE COURT: Go ahead.

22 MR. HARVEY: On or about -- well, yesterday

1 Staff filed and, prior to that, circulated a document
2 that's been marked for exhibit -- as ICC Staff
3 Exhibit 3.0, which I will describe briefly is a
4 stipulation between Commonwealth Edison and the
5 Commission Staff to the foundational elements for
6 ComEd's responses to Staff Data Requests FD 1.04 and
7 1.05 that consists of a stipulation and an attachment
8 of two pages consisting of those data requests.

9 I circulated it, as I said, to the
10 parties on Monday in paper form and filed it and
11 served it upon the parties in a more formal manner
12 yesterday. It bears the tracking number 88782.

13 I would move that into evidence at
14 this point.

15 THE COURT: Is there any objection?

16 MR. MURPHY: No objection.

17 MR. LASCARI: No objection, your Honor.

18 MS. LICUP: No objection.

19 MR. HARVEY: And with that, then finally the
20 Staff will call Mr. Greg Rockrohr.

21 THE COURT: Let me admit it into the record.

22 MR. HARVEY: Oh, okay.

1 THE COURT: Jumping the gun there.

2 ICC Staff Exhibit 3.0 will be admitted

3 into the record.

4 (Whereupon, ICC Staff Exhibit

5 No. 3.0 was admitted into

6 evidence.)

7 MR. HARVEY: We're all eager to see this great

8 drama resolve.

9 THE COURT: I can tell. Everybody's got this

10 sort of renewed vigor.

11

12

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14

15

16

17 (Witness sworn.)

18

19

20

21

22

1 GREG ROCKROHR,
2 called as a witness herein, having been first duly
3 sworn, was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY
6 MR. HARVEY:
7 Q Could you state your name, please,
8 Mr. Rockrohr.
9 A Greg Rockrohr, R-o-c-k-r-o-h-r.
10 Q How are you employed, Mr. Rockrohr?
11 A I'm a senior electrical engineer on the
12 Staff of the Commerce Commission in the energy
13 division.
14 Q Thank you, sir.
15 I'm going to draw your attention to
16 what's been marked for identification as Staff
17 Exhibit 1.0, a document of consisting of 12 pages of
18 text in question-and-answer form with three
19 attachments designated A, B, and C respectively.
20 Do you have that before you, sir?
21 A Yes.
22 Q Is that your direct testimony in this

1 proceeding?

2 A Yes.

3 Q Was that prepared by you or at your
4 direction?

5 A Yes.

6 Q If I were to ask you the questions
7 contained in Staff Exhibit 1.0 today, would your
8 answers be the same as those set forth in response to
9 the questions in that exhibit?

10 A Yes, with one correction.

11 Q And what would that be, Mr. Rochrohr?

12 A On Line 68 and 69 on Page 3, I stated that
13 had ComEd plans to install 2138 KB circuits on the
14 south side of the structures. In actuality, that
15 should have been on the north side of the structures.

16 Q And, just to be clear, Mr. Rockrohr, you
17 identified that in your rebuttal testimony as well,
18 did you not?

19 A That is correct.

20 Q And does that change your opinion in any
21 way?

22 A No.

1 Q Thank you very much.

2 MR. HARVEY: I would note, for the record, that

3 Staff Exhibit 1.0 bears the tracking number 85703.

4 BY MR. HARVEY:

5 Q Let me ask this, Mr. Rockrohr:

6 Do you have before you a document

7 consisting of four pages of text in

8 question-and-answer format with one attachment,

9 designated Attachment A?

10 A Yes.

11 Q Is that where you rebuttal testimony in

12 this proceeding?

13 A Yes.

14 Q Was that prepared by you or at your

15 direction?

16 A Yes.

17 Q And if I were to ask you the questions set

18 forth in Staff Exhibit 2.0, would your answers be the

19 same as they are?

20 A Yes.

21 MR. HARVEY: I would note that Staff

22 Exhibit 2.0 bears the tracking number 88143.

1 At this time I will move both Staff
2 Exhibits 1.0 and 2.0 into evidence and tender the
3 witness for such cross-examination as there might be.

4 THE COURT: Any objections?

5 MS. LICUP: No, your Honor.

6 MR. LASCARI: No objection, your Honor.

7 MR. SHAY: One point, your Honor.

8 Mr. Harvey -- I don't know -- on my copy of Staff
9 Exhibit 2.0, the second and subsequent pages are
10 labeled 1.0 not 2.

11 MR. HARVEY: You are absolutely right,
12 Mr. Shay. I'm sorry about that. It is correctly
13 labeled on the first page. If anybody feels strongly
14 about that, we will correct that and circulate a
15 further exhibit.

16 MR. SHAY: I don't. I just feel like noting it
17 for the record.

18 MR. HARVEY: Thank you very much, sir. I
19 appreciate your attention to detail, which apparently
20 is considerably greater than mine.

21 THE COURT: Okay. Then with that, Staff
22 Exhibit 1.0 with Attachments A, B, and C will be

1 admitted into the record. And Staff Exhibit 2.0 with
2 Attachment A will also be admitted into the record.

3 (Whereupon, ICC Staff Exhibit
4 Nos. 1.0 and 2.0 were admitted
5 into evidence.)

6 THE COURT: Mr. Murphy, you have only
7 five minutes with Mr. Rochrohr?

8 MR. MURPHY: Yes.

9 THE COURT:

10 CROSS-EXAMINATION

11 BY

12 MR. MURPHY:

13 Q Mr. Rochrohr, my name is Joe Murphy. I
14 represent the Village of Huntley.

15 You're aware that one of the issues in
16 this case is the sensitivity -- or an environmental
17 sensitivity created by the line passing occupied --
18 currently occupied residences.

19 Are you familiar with that issue?

20 A I am.

21 Q And today -- or so far ComEd has measured
22 that sensitivity by acres impacted, and Huntley has

1 measured that impact by the number of homes -- the
2 actual unit number of homes.

3 Are you familiar with those two
4 positions in this case?

5 A Marginally.

6 Q In your opinion -- well, let me ask you
7 this:

8 Is passing existing residential homes,
9 is that a common issue in transmission line cases?

10 A Yes.

11 Q And that's due to the impact of impassing
12 residences; right?

13 A Yes.

14 Q What is the impact that that issue raises?

15 A The property owners don't want it there.

16 Q And if the Commission is going to take
17 residential -- existing residential units into
18 account, in your opinion, should that they evaluate
19 that on the basis of acres impacted or number of
20 homes impacted?

21 A It's logical, to me, to base it on the
22 number of residences impacted.

1 MR. MURPHY: Thank you.

2 No further questions.

3 THE COURT: Thank you.

4 ComEd?

5 MS. LICUP: Your Honor, thank you.

6 CROSS-EXAMINATION

7 BY

8 MS. LICUP:

9 Q I'm Katie Licup, an attorney for

10 Commonwealth Edison.

11 Mr. Rockrohr, on Page 12 of your

12 direct testimony, at Lines 248 through 250, you state

13 that you found no reason to disagree with ComEd's

14 decision to select the Kreutzer Road Route for the

15 proposed line.

16 Is that still your opinion today?

17 A Yes.

18 MS. LICUP: No further question.

19 THE COURT: Thank you.

20 Mr. Robertson?

21 MR. ROBERTSON: No. Thank you.

22 THE COURT: Mr. Lascari?

1 MR. LASCARI: I have no questions for this
2 witness, your Honor.

3 THE COURT: Any redirect?

4 MR. HARVEY: I'm trying to think what it could
5 be on; but, based on the scope of the
6 cross-examination, Staff would really be sorely
7 pressed to have any redirect.

8 THE COURT: All right. I think that concludes
9 this then.

10 Do we have any other exhibits or
11 anything else to put into the record?

12 (No response.)

13 THE COURT: All right. Then we're going to
14 talk about the briefing schedule off the record.

15 All right. I'll mark this matter
16 heard and taken then.

17 (Whereupon, a discussion was had
18 off the record.)

19 THE COURT: Back on the record.

20 First, I will strike marking the
21 record heard and taken. So we can reopen the record
22 with that permission and authority.

1 Mr. Murphy?

2 MR. MURPHY: Yesterday I offered into evidence
3 as Huntley Cross-Exhibit 4 a plat number of Wing
4 Pointe, and I believe it was admitted, but I did not
5 have copies. Therefore, I had copies made overnight.

6 This morning when I brought the copies
7 in, I inadvertently had them marked as Huntley
8 Cross-Exhibit No. 6; and, again, asked to confirm
9 their admission, and they were admitted then as
10 Huntley Cross-Exhibit No. 6.

11 Because we have copies that were
12 marked as Huntley Cross-Exhibit No. 6, but not 4, I
13 would proceed to withdraw Huntley Cross-Exhibit 4 and
14 stand on Huntley Cross-Exhibit 6.

15 THE COURT: All right. Then with that, we will
16 strike the admission of Huntley Cross-Exhibit No. 4
17 into the record and affirm again that Huntley
18 Cross-Exhibit No. 6 is the site map of --

19 MR. MURPHY: The plat map.

20 THE COURT: -- the plat map of the Wing Pointe
21 Subdivision.

22 With that, we are marked heard and

1 taken.

2 HEARD AND TAKEN.

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